Amend. Compl.
filed Oct. 1977

JA 130

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON 901 6th Street, S.W. Apt. 214-A Washington, D.C. 20024 (202) 724-8072 ABE BLOOM 3313 Harrell Street Wheaton, Maryland 20906 (301) WH 2-5393 ARTHUR I. WASKOW 1808 Wyoming Avenue, N.W. Washington, D.C. (202) 332-3307 TINA HOBSON 906 6th Street, S.W. Apt. 214-A Washington, D.C. 20024 (202) 245-9494 REV. DAVID EATON 2039 New Hampshire Avenue, N.W. Washington, D.C. (202) 332-5266 SAMMIE A. ABBOTT 1015 Dupont Circle Building 1346 Connecticut Avenue, N.W. Washington, D.C. 20036 (202) 296-4350 RICHARD P. POLLOCK 1740 S Street, N.W. Washington, D.C. 20009 (202) 667-9076 WASHINGTON PEACE CENTER 2111 Florida Avenue, N.W. Washington, D.C. 20008 (202) 234-2000 WASHINGTON AREA WOMEN STRIKE FOR PEACE 120 Maryland Avenue, N.E. Washington, D.C. 20002 (202) 546-7397 EMERGENCY COMMITTEE ON THE TRANSPORTATION CRISIS 1015 Dupont Circle Building 1346 Connecticut Avenue, N.W. Washington, D.C. 20036 REGINALD H. BOOKER 459 Luray Place, N.W. Washington, D.C. 20010 (202) 723-3330	Civil Action No. 76-1326

Plaintiffs,

v.

CHIEF JERRY V. WILSON (Retired))
Metropolitan Police Department)
4415 Springdale Street, N.W.)
Washington, D.C.)
)
CHIEF JOHN B. LAYTON (Retired))
Metropolitan Police Department)
1845 Redwood Terrace, N.W.)
Washington, D.C.)
)
INSPECTOR ROBERT L. ZINK)
Metropolitan Police Department)
Intelligence Division)
300 Indiana Avenue, N.W.)
Washington, D.C.)
)
INSPECTOR ALBERT W. FERGUSON)
Metropolitan Police Department)
Field Inspection Division)
300 Indiana Avenue, N.W.)
Washington, D.C.)
)
INSPECTOR THOMAS J. HERLIHY)
Metropolitan Police Department)
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Washington, D.C.)
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ASST. POLICE CHIEF THEODORE R.)
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SGT. DIXIE GILDON)
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)
ROGER O. DAY (Former Officer)
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)
UNKNOWN AGENTS)
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Washington, D.C.)
)
DISTRICT OF COLUMBIA)
A Municipal Corporation)
Serve: Walter E. Washington,)
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12th & Pennsylvania Ave., N.W.)
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)
UNKNOWN AGENTS)
Washington Field Office, FBI)
Washington, D.C.)
)
Defendants)
)

AMENDED COMPLAINT
(Damages and Injunctive Relief)

JURISDICTION

1. This is an action for damages for violation of the plaintiffs' First, Fourth, Fifth and Ninth Amendment rights, for violation of 42 U.S.C. §§ 1985(c) and 1986, for violation of Federal and District of Columbia laws governing the interception of oral communications, and for trespass, conversion and invasion of privacy.

2. The jurisdiction of the Court is based on 28 U.S.C. §§ 1331, 1343(1), (2) and (4); 1337; and 1355. The amount in controversy exceeds $10,000 exclusive of interests and costs, for each plaintiff.

PARTIES

Plaintiffs

3. Julius Hobson, resident of the District of Columbia and member of the D.C. City Council, has been an active leader in community activities, including the anti-war movement since before 1964 through the present.

4. Abraham Bloom, an electronic engineer and a resident of Maryland, has been, since before 1964, active in community affairs including the anti-war movement and was one of the principal organizers of the Washington Area Peace Action Coalition and is its present chairperson.

5. Arthur Waskow, a resident of the District of Columbia, has since 1964 been a fellow at the Institute for Policy Studies, a private social research organization.

6. Tina Hobson, a resident of the District of Columbia and an employee of the Federal Energy Administration, has been

an active leader in community affairs, including the anti-war movement and the women's movement since before 1964 through the present. From 1967 through 1969, she was Director of the Federal Women's Program at the U. S. Civil Service Commission.

7. Reverend David Eaton, a resident of the District of Columbia, has been since 1969 the Minister of All Souls' Unitarian Universalist Church in Washington, D.C., and has been since before 1964 an active leader in community affairs, including the anti-war movement.

8. Sammie Abbott, a resident of Maryland and a graphic artist, has been since before 1964 an active leader in community affairs, including the anti-war movement, and is publicity coordinator for the Emergency Committee on the Transportation Crisis.

9. Richard Pollock, a resident of the District of Columbia, is a free-lance journalist and was active in the anti-war movement as a college student (1969-1971) and subsequently.

10. The Washington Peace Center is a private, non-profit organization having as one of its chief goals the diversion of government spending from military armaments to peaceful, domestic programs and which has, since 1964 through the present, carried out local and nationwide programs to further these goals.

11. Washington Area Women Strike for Peace (WSP), the local branch of the national Women's Strike for Peace, is a private, non-profit organization whose goals and activities are dedicated to mobilizing women as a force for peace both in their own communities and in the nation and in an effort to achieve their goal, WSP, from 1964 through the present, organized meetings, marches and demonstrations of women and men to express their members' opposition to the United States' military involvement in Indochina.

12. The Emergency Committee on the Transportation Crisis is a private, non-profit association of local area residents opposed to unnecessary and excessive freeway construction in the District of Columbia and environs and who urge and support local government efforts to plan for human beings rather than solely for automobile travel and storage; ECTC has been active since 1965.

13. Reginald H. Booker, a resident of the District of Columbia and an employee of the D.C. Department of Human Resources, is Vice-President of the Black United Front, an organization he helped establish in 1967.

Defendants

14. Defendant John B. Layton and his successor, defendant Jerry V. Wilson, served successive terms as Chief of the Police Department of the District of Columbia during the period relevant to this complaint, viz. 1964-1974. As Chief of Police, defendants Layton and Wilson were responsible for the formulation, administration and implementation of Metropolitan Police Department policy and practices concerning political surveillance. Defendants Zanders, Zink, Ferguson, Acree, and Herlihy had supervisory responsibility for the operations of the Intelligence Division of the D.C. Police Department during some or all of the period 1964-1974.

15. Defendants Gildon, Shoffler, Ferguson, Suter, Day, Scrapper, Bynum, Jagen, and Mahaney are members of the Metropolitan Police Department and were employed by or assigned to the Intelligence Division of the Police Department during some or all of the period 1964-1974.

16. Defendants Markovich, Binsted, Fulcher and other unknown persons were paid informants of the Metropolitan Police Department during the period of 1964-1974.

17. Clarence M. Kelley is Director of the Federal Bureau of Investigation (FBI), a position he has occupied since July, 1973.

18. William C. Sullivan, a resident of New Hampshire, is a retired official of the FBI and was during most of the period 1964-1974 Assistant Director of the FBI in charge of the Intelligence Division and had responsibility for administering, inter alia, the FBI's counter-intelligence programs.

19. Charles D. Brennan is a retired official of the FBI who, during most of the period 1964-1974, was assigned to the Intelligence Division where he had responsibility, inter alia, for developing FBI policies vis-a-vis the New Left.

20. George C. Moore is an official of the FBI who, during most of the period 1964-1974, was assigned to the Intelligence Division where he had responsibility, inter alia, for developing FBI policies with respect to persons thought by the FBI to be "Key Extremists" or "Key Black Extremists."

21. Robert G. Kunkel is the Special Agent in Charge (SAC) of the Alexandria Field Office of the FBI and was from July, 1970, until October, 1972, the Special Agent in Charge (SAC) of the Washington, D.C. Field Office.

22. John J. McDermott is an employee of the FBI currently assigned to duty in the J. Edgar Hoover Building and who was from October, 1972, until June, 1974, the SAC of the Washington, D.C. Field Office.

23. Nick Stames is currently the SAC of the Washington, D.C. Field Office.

24. David Rarrity, Charles M. Sawyer, Robert E. Yates, Robert W. Feuer, Terry O'Connor, Clifford F. Arney, F. F. Burgess, Charles A. Ferguson, C. Edwin Glass, Fred B. Griffith, Gerald T. Grimaldi, Peter A. Gulotta, Norman H. Hieronymi, Courtland J. Jones, Richard W. Kaiser, Joseph E. Keller, Hilmer H. Krebs, Paul D. Lamberth, Robert F. Olmert, John R. Palmer, Gerould W. Pangburn, Edward Rudiger, Wilfred R. Schlarman, John L. Stanley, Garnett T.

Tunstall, Edwin A. Waite, Jr., Leonard E. Webster, James F. Whalen, and Philip H. Wilson were employees of the Washington Field Office of the FBI during part or all of the period 1964-1974.

25. The District of Columbia is responsible for the acts and liabilities of its employees and agents.

FACTS

26. From 1967 or 1968 to 1974, the defendant D.C. supervisory officials authorized or acquiesced, and the defendant D.C. agents and informers participated in, various activities of surveillance, disruption and interference aimed at plaintiffs and others who engaged in demonstrations and other forms of political activity in the District of Columbia, with particular emphasis on persons and groups active in the anti-Vietnam War movement. These activities were conducted chiefly through the Intelligence Division of the Metropolitan Police Department. Large sums of money, including $70,000 in fiscal 1972, were used by the defendant D.C. supervisory officials and agents to pay the defendant informers to participate in these activities.

27. The surveillance actions of defendant D.C. officials, agents and informers against plaintiffs included using undercover agents to fraudulently gain entry to private meetings to learn the plans and programs of plaintiffs, electronic surveillance without judicial authorization, breaking and entering to obtain membership lists and other private political documents, mail interception, and physical surveillance, that is, surreptitiously following plaintiffs and monitoring plaintiffs' activities.

28. Efforts by defendants or their agents to disrupt and interfere with the plaintiffs' political activities included, but were not limited to, urging violent or unlawful actions, and supplying the public and/or news media with false information about the plaintiffs and their plans.

29. The defendant FBI officials and agents engaged in the same activities against the plaintiffs from 1968 to 1973 as those described in paragraphs 26 through 28, above.

30. Some or all of the activities of defendants described in paragraphs 26 through 29, above, were conducted pursuant to a plan formulated by the FBI and/or the Metropolitan Police Department to conduct surveillance upon and to disrupt the activities of certain political groups viewed by said defendants as the "New Left."

31. Some or all of the activities of defendants described in paragraphs 26 through 29, above, were conducted pursuant to a plan formulated in 1968 by defendants Sullivan and Brennan and other unknown FBI officials, known as "COINTELPRO/New Left." This program was designed to conduct surveillance upon and to cause disruption of the activiites of what the defendants regarded as the "New Left." Defendant FBI supervisory officials directed the field offices of the FBI to participate in this program.

32. The Washington, D.C. field office of the FBI, directed successively by defendants Stames, Kunkel, and McDermott, as Special Agent in Charge, participated in the COINTELPRO program, and solicited and received the active participation in that program of defendant D.C. supervisory officials, agents, and informers.

33. The aforementioned activities of the defendants were purportedly conducted pursuant to their official capacities, and were conducted by said defendants, individually or in concert:

(a) Knowing such actions to be illegal and with the intention of injuring plaintiffs; or

(b) With reckless disregard of plaintiffs' rights; or

(c) Without reasonable basis to believe such actions were legal; or

(d) Through negligently failing to know or inquire concerning the legality of such actions; or

(e) As a conspiracy or part of a conspiracy by the D.C. defendants or the FBI defendants or both groups of defendants to violate plaintiffs' First and Fifth Amendment rights.

34. In 1975 and at other times, the defendants, including in particular the defendant Zanders, attempted to conceal the aforementioned tortious actions of the other defendants, or conspired to conceal them, by destroying many of the records of the aforementioned illegal activities after their actions had been publicly exposed.

WRONGS

35. The aforementioned actions of defendants violated plaintiffs' rights in one or more of the following respects:

(a) They violate plaintiffs' rights under the First and Fifth Amendments of the United States Constitution;

(b) They violate plaintiffs' rights under the Fourth Amendment of the United States Constitution, and plaintiffs' common law rights against trespass and conversion;

(c) They violate plaintiffs' constitutional and common law rights of privacy in their affairs, privacy in their beliefs, and privacy in their political discussions, beliefs and associations;

(d) They violate plaintiffs' rights under 42 U.S.C. 1986 by defendants' failure to exercise the power they possessed to prevent or aid in preventing the illegal acts and conspiracy described herein;

(e) They violate plaintiffs' rights under 18 U.S.C. 2520; 23 D.C. Code 554; and 18 U.S.C. 1702; and

(f) They constitute a conspiracy in violation of 42 U.S.C. 1985(3).

INJURIES

36. The foregoing actions of defendants injured plaintiffs by violating their constitutional rights, by impeding their efforts to bring about a hasty conclusion to the Vietnam War, by otherwise impeding lawful political efforts of plaintiffs, by falsely tainting plaintiffs' efforts and movement and thus preventing the plaintiffs from attracting even greater and more rapid and effective public support than they did, and by causing apprehension among the public concerning the freedom and privacy of engaging in political activity so as to permanently injure plaintiffs' efforts to gain greater participation in and acceptance of their political causes and objectives.

RELIEF

WHEREFORE, Plaintiffs pray for judgment against each defendant, jointly and severally, as follows:

1. Awarding each plaintiff $50,000 compensatory and $100,000 punitive damages for conspiracy to violate plaintiffs' constitutional and other rights;

2. Awarding each plaintiff $10,000 compensatory and $20,000 punitive damages for violation of First Amendment rights;

3. Awarding each plaintiff $10,000 compensatory and $20,000 punitive damages for violation of Fourth Amendment rights, or trespass and conversion;

4. Awarding each plaintiff $100 per day compensatory damages (or $1,000 if greater) for each day upon which the defendants intercepted plaintiffs' oral communication in violation of 18 U.S.C. 2520 or 23 D.C. Code 554;

5. An injunction ordering the defendants to produce forthwith any and all files of a non-criminal nature on the plaintiffs' political activities, affiliations, and beliefs and to

destroy any copies of or reference to said records in any files under the control or supervision of the defendants;

6. Awarding plaintiffs costs and attorneys' fees; and

7. Such other relief as the Court deems just.

The plaintiffs demand a trial by jury.

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	CIVIL ACTION NO. 76-1326

NOTICE OF FILING CLAIM OF INFORMANT
PRIVILEGE AND SUBMISSION OF IN CAMERA EXHIBIT

Please take notice that defendant Clarence M. Kelley, pursuant to this Court's Orders of June 24, 1977, and October 26, 1977, has filed the attached Affidavit and Claim of Privilege by Attorney General Griffin B. Bell regarding that information which could reasonably be expected to disclose the identity of confidential informants. This Affidavit is accompanied by an in camera exhibit, identified as Exhibit E, and the Declaration of David H. White, identified as Exhibit I.

DATED: December 15, 1977

Respectfully submitted,

Barbara Allen Babcock
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145-A

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 76-1326
JERRY WILSON, et al., Defendants.	)	

AFFIDAVIT AND CLAIM OF PRIVILEGE

City of Washington)
) ss
District of Columbia)

GRIFFIN B. BELL, being duly sworn, deposes and says as follows:

1. I am the Attorney General of the United States and head of the United States Department of Justice, an Executive Department of the United States Government. I have official custody and control of the files and records of the United States Department of Justice. The matters herein are based upon my knowledge and upon review and consideration of information available to me in my official capacity.

2. I am aware that the plaintiffs in this action have demanded, and this Court has ordered, the production of Federal Bureau of Investigation files relating to the internal security investigations of plaintiffs. I am also aware that this Court has directed that the head of the agency involved, in this instance the Department of Justice, must claim the privilege as to information in the files which could reasonably be expected to reveal the identities of confidential informants. I have been advised, however, that this Court will permit the privilege to be considered and claimed by me through a representative

sample of the information withheld and that I am not required, therefore, to review personally each excision of information from the documents to be produced to plaintiffs.

3. (a) The Federal Bureau of Investigation, through the Assistant Attorney General, Civil Division, has made available to me a quantity of documents from plaintiffs' files which I am advised constitutes a "representative sample" of the information withheld from plaintiffs in order to prevent the disclosure of the identities of confidential informants. Mr. David H. White, an attorney in the Department of Justice's Civil Division, affirms in his written declaration that these documents are representative of all the information withheld pursuant to the informant privilege [See Declaration of David H. White, attached as Exhibit I to this affidavit]. On the basis of this declaration and assurances to the same effect by the Federal Bureau of Investigation, I believe these documents are sufficiently representative to permit me to give full consideration to, and for the court to uphold, this formal claim of privilege.

(b) The documents constituting the "representative sample" are contained in in camera exhibit E. Red markings on the documents indicate those portions which were expunged in order to prevent disclosure of the identifies of confidential informants.

4. My understanding of the law applicable to these matters is that the government is entitled to assert privilege against the disclosure of the identity of persons who provide information to assist the government in its law enforcement endeavors. By removing the fear of reprisal, the privilege encourages citizens to cooperate in the administration of justice and thus serves the interest of the public in protecting the flow of information. Although only the identity of the informant is privileged, the informant's communication is privileged to the extent that its disclosure would operate also to disclose the informant's identity.

5. The expunctions made in the documents contained in in camera exhibit E are consistent with the principles stated in paragraph 4 of this affidavit. The informant's name and address are removed wherever a document indicates that that person has provided information on a confidential basis. Also excised are the abstract symbols used by the Federal Bureau of Investigation in recording and transmitting information provided by informants. Where the text of the communication could reasonably be expected to disclose an informant's identity, it is excised either selectively or, if necessary, in its entirety. An entire document is withheld if (a) all the information appears to have been available only to the informant, such as where the report concerns a personal contact or conversation between the informant and the subject, or (b) the information was available to a small identifiable group of persons so that there is a significant risk the informant could be isolated and identified. The latter situation occurs, for example, where the informant is present at and reports on a series of gatherings or events and it would be possible to identify the only person, or the few persons, present on each such occasion. In addition, all informant handwriting has been expunged since that could lead to disclosure of his or her identity. Selective excision is made where it is possible to isolate and remove discrete items, such as name, dates, places, or other information that would tend to identify the informant, but the text otherwise remains intact. Where it reasonably appears that nothing in the report could identify the informant, such as a report of a large public meeting, no excisions are made. In camera exhibit E contains examples of each manner of excision and demonstrates the various sorts of circumstances in which information has been withheld from plaintiffs in order to prevent disclosure of the identities of confidential informants.

145-D

6. Having personally considered the information made available to me and being cognizant of the governmental interest in protecting the identities of persons who assist in the enforcement of the laws by providing information to the government on a confidential basis, I herewith formally claim privilege as to that information contained in the files being produced by the Federal Bureau of Investigation which could reasonably be expected to reveal the identities of confidential informants.

Griffin B. Bell

GRIFFIN B. BELL
Attorney General of the
United States

Sworn to and subscribed before me this 15th day of December 1977.

Cindy J. Williams
Notary Public

My commission expires March 14, 1979.

145-E

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 76-1326
JERRY WILSON, et al., Defendants.	)	

DECLARATION

City of Washington)
) ss
District of Columbia)

DAVID H. WHITE declares the following to be true and correct:

1. I am a Trial Attorney with the United States Department of Justice, Washington, D.C., and the attorney of record for the present and former employees and officials of the United States Government who are defendants in this civil action.

2. By Order of April 19, 1977, this Court directed the Federal Bureau of Investigation to produce for plaintiffs' inspection the files pertaining to the internal security investigations of plaintiff. The Court later stated, in an Order dated June 24, 1977, and in open court on June 28, 1977, that if the Federal Bureau of Investigation desired to withhold any information on grounds that its release would disclose the identity of a confidential informant, the withholding must be supported by a formal claim of privilege executed by the Attorney General. The Court explained that the Attorney General could accomplish the claim of privilege by consideration of a "representative sample" rather than all of the information protected by the privilege.

EXHIBIT I

145-F

3. Following this Court's denial on October 26, 1977, of the motion to reconsider the requirement that the informant privilege be claimed by the Attorney General, a "representative sample" of information withheld on the basis of the privilege was compiled for the consideration of the Attorney General and for presentation to this Court for its in camera, ex parte examination. With the assistance of a Special Agent of the Federal Bureau of Investigation's Office of Legal Counsel, who was closely involved in the review and preparation of the files for production, I personally reviewed the files to select those items which would constitute the materials to be considered by the Attorney General. Having also been involved in a supervisory way in the preparation of the documents for production, I was generally familiar with the various kinds of circumstances in which information had been excised in order to protect the identities of informants.

4. In undertaking the selection process, we concluded that it would be impracticable to take a sample of information pertaining to each informant in the files, as that would have resulted in an unmanageably large body of materials. We elected instead to select from each of the files examples which reflected the various kinds of situations in which information has been expunged in order to protect informant identities. The representative sample thus includes documents which were (a) produced in their entirety except for deletion of the informant's name or the Federal Bureau of Investigation's abstract informant symbol, (b) produced with discrete items of information removed but with a substantial portion of the text left intact, and (c) withheld entirely where it appeared that removal of selected items of information would not have sufficiently protected against disclosure of an informant's identity.

5. I believe this collection of materials is sufficient to demonstrate to the Attorney General and to this Court the manner and circumstances in which information which could reasonably be expected to reveal the identities of confidential informants was removed from documents prior to production to plaintiffs.

I believe these documents are representative of all the information withheld pursuant to the informant privilege; accordingly, I believe they constitute an appropriate "representative sample" as requested by this Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed On:

December 15, 1977

David H. White

DAVID H. WHITE
Attorney, Department of Justice

145-H

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	CIVIL ACTION NO. 76-1326 Filed: December 15, 1977

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF THE CLAIM OF INFORMANT PRIVILEGE

Introduction

Plaintiffs in this action have requested, and this Court has ordered, that defendant Clarence M. Kelley produce the Federal Bureau of Investigation's files reflecting internal security investigations of plaintiffs.

The files at issue in this demand contain information concerning plaintiffs, or concerning persons or organizations with whom plaintiffs were associated, some of which information was provided to the Federal Bureau of Investigation by in excess of 300 confidential informants. Such information was provided to the Bureau over the entire period covered by the various files, which was from the 1940's to the early 1970's.

The Attorney General, as the chief executive officer of the Department of Justice, of which the Federal Bureau of Investigation is a component, has formally claimed privilege as to the identities of the confidential informants and to that information in the files which could reasonably be expected to disclose their identities.

Discussion

The Courts have long recognized that the Government is entitled to preserve the confidentiality of the identities of those persons who provide information to assist the government in its law enforcement endeavors. "By withholding the identity of the informer, the government profits in that the continued value of informants placed in strategic positions is protected, and other persons are encouraged to cooperate in the administration of justice." United States v. Tucker, 380 F.2d 206, 213 (2nd Cir. 1967). The privilege thus serves the function of protecting informants from retaliation or reprisal and, as stated in Roviaro v. United States, 353 U.S. 53, 62 (1957), serves the interest of the public "in protecting the flow of information." See also, Association for Women in Science v. Califano, No. 75-2139 (D.C. Cir., October 21, 1977).

The application of the privilege is appropriate in civil cases as well as criminal. See Westinghouse Electric Corp. v. City of Burlington, Vermont, 351 F.2d 762 (D.C. Cir. 1965). Moreover, the privilege limits the right of disclosure under Rule 34 of the Federal Rules of Civil Procedure. Wirtz v. Robinson & Stephens, Inc., 368 F.2d 114, 116 (5th Cir. 1966).

For the foregoing reasons, defendant Kelley is entitled to withhold from plaintiffs that information which would disclose the identities of confidential informants. It is recognized, however, that the privilege is not absolute and there may be circumstances which require disclosure. The Court of Appeals for the Second Circuit recently discussed this aspect of the informant privilege in Socialist Workers Party, et al. v. The Attorney General, et al., No. 1562 (decided October 11, 1977):

> The burden of establishing the need for disclosure is upon the person who seeks it. United States v. Prueitt, 540 F.2d 995, 1004 (9th Cir. 1976), cert. denied, 429 U.S. 1062 (1977). This burden is not met by mere speculation that identification might possibly be of some assistance. United States v. Prueitt, 540 F.2d at 1003; United States v. D'Amato, 493 F.2d 359, 366 (2d Cir.), cert. denied, 419 U.S. 826 (1974). Disclosure should not be directed simply to permit a fishing expedition, United States v. Berrios, 501 F.2d 1207, 1211 (2d Cir. 1974); Waldron v. Cities Service Co., 361 F.2d 671, 673 (2d Cir. 1966), aff'd sub nom. First National Bank v. Cities Service Co., 391 U.S. 253 (1968), or to gratify the moving party's curiosity or vengeance, Shore v. United States, 49 F.2d 519, 523 (D.D.C. 1931), but only after the trial court has made a determination that plaintiff's need for the information outweighs the defendant's claim of privilege. Kerr v. United States District Court, 426 U.S. 394, 405 (1976).

Plaintiffs in this case have not yet stated their need for the disclosure of the identity of informants; therefore, this memorandum cannot address with particularity the considerations which would bear upon the matter of disclosure of an individual informant. The only general comment that can be made is with regard to plaintiffs' steadfast demand for full disclosure of all information regardless of whether or not it pertains to the allegations of the Complaint or the actions of the defendants. A wholesale disclosure of the identity of informants would not only be inappropriate and unnecessary for purposes of this case but could have disasterous effects on the government's ability to seek and obtain the assistance of private citizens in the administration of justice.

Moreover, plaintiffs may be unable to establish a legal theory to support their assertion of need for the identities of informants. As stated in United States v. Miller, 425 U.S. 435 (1976), the Supreme Court:

> has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed.

425 U.S. at 443; Accord, United States v. White, 401 U.S. 745 (1971); Hoffa v. United States, 385 U.S. 293 (1966); Lopez v. United States, 373 U.S. 427 (1963).

CONCLUSION

For the foregoing reasons, the claim of privilege regarding the identities of confidential informants and information which could reasonably be expected to disclose the identities of informants should be sustained. Defendant Kelley reserves the right to make further argument on this matter should plaintiffs endeavor to state their need for disclosure of all or part of this information.

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney

DAVID J. ANDERSON

DAVID H. WHITE

Attorneys, Department of Justice
Washington, D.C. 20530
Telephone: (202)739-4269

Attorneys for defendant
Clarence M. Kelley

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
Plaintiffs,	)	Filed: February 7, 1978
v.	)	CIVIL ACTION NO.
JERRY WILSON, et al.,	)	76-1326
Defendants.	)	

NOTICE OF FILING CLAIM OF PRIVILEGE
BY THE SECRETARY OF THE ARMY AND
SUBMISSION OF IN CAMERA EXHIBIT

Please take notice that defendant Clarence M. Kelley, pursuant to this Court's order of June 24, 1977, has filed the attached AFFIDAVIT AND CLAIM OF PRIVILEGE by the Secretary of the Army regarding certain information provided by the United States Army to the Federal Bureau of Investigation. This affidavit is accompanied by an in camera exhibit, identified as Exhibit F.

DATED: February 7, 1978

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney

DAVID J. ANDERSON

David H. White

DAVID H. WHITE

Attorneys, Department of Justice
Attorneys for Defendant Kelley
Washington, D. C. 20530
Telephone: 202-739-4269

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al.,	)	
Defendants	)	

AFFIDAVIT AND CLAIM OF PRIVILEGE

COUNTY OF ARLINGTON)
) ss
COMMONWEALTH OF VIRGINIA)

I, CLIFFORD L. ALEXANDER, JR., being duly sworn, depose as follow:

1. I am the Secretary of the United States Army, a Department of the Executive Branch of the United States. I have official custody and control of the files and records of the United States Army. The matters stated herein are based upon my knowledge and upon my personal review and consideration of information available to me in my official capacity.

2. In response to a court order for production of documents in the case Julius Hobson, et al. v. Jerry V. Wilson, et al., Civil Action No. 76-1326, I submit this affidavit and claim of privilege on behalf of the United States of America with regard to a number of Army-originated documents discovered in the files of the Federal Bureau of Investigation. They are described in paragraph 3, below. I have personally reviewed and considered each of the items as to which I am asserting privilege.

3. The material that is the subject of this affidavit and as to which I hereby claim the executive privilege for military and state secrets consists of portions of thirty-four pages of documents found in FBI files which are classified under the provisions of Executive Order No. 11652. Copies of these portions of pages have been marked "Army," numbered 1 through 34 serially, and returned to the FBI. This affidavit addresses only the Army information contained in these documents.

4. The information over which I assert privilege was collected by the United States Army in West Berlin between 1963 and 1970. The Army organization that collected the information was responsible for monitoring certain activities in the United States Sector of West Berlin, and operated pursuant to instructions of the United States Commandant of Berlin. The principal responsibility of this collection operation was to help maintain the security of West Berlin, particularly the American Sector of West Berlin, and to collect information on the Soviet Union and Eastern European countries. The operation continues today and its activities are closely monitored by the civilian leaders of the Department of Defense, Department of Justice and national intelligence community.

5. Extant Army records indicate that the information being sought by the plaintiffs was collected in the course of a program to monitor the activities of Soviet and East European intelligence services. The documents were provided to the FBI representative in Bonn. The program was targeted against organizations in East Berlin believed to be "front" organizations for hostile intelligence services and against individuals operating under assumed names believed to be agents for hostile intelligence services. These individuals and organizations were

believed to have been maintained by hostile intelligence services, often given English-language names and staffed by English-speaking personnel, for the purpose of communicating with and contacting persons in the West. Upon establishing a communication link, the individual or organization would attempt to solicit information of interest to Soviet and East European intelligence services and at times would try to recruit U.S. citizens as agents. Generally speaking, such individuals and organizations sought both classified and unclassified information on military, economic, social and political trends in the United States.

6. Based upon Army files, it is believed that the information sought by the plaintiffs was collected under this particular program. The information was not acquired by Army intelligence in the course of any effort targeted against any of the plaintiffs. There is no evidence in Army files that the information was of interest to Army intelligence or was even retained by the Army. It is likely, however, that the Army would have viewed the information only as evidence of the activities and capabilities of the hostile intelligence services, and would have used the information only to make assessments of the successes and capabilities of particular hostile intelligence collection efforts. Twenty-four of the thirty-four pages of material sought by the plaintiffs relate solely to intelligence collection efforts conducted before January 1, 1967, which is the earliest date mentioned in the factual allegations made by the plaintiffs. These documents relate to a national organization of which one of the plaintiffs was a member. The remaining ten pages, all dated after January 1, 1967, are also confined to the same national organization and neither mention nor bear any relation to the Washington, D.C. area -- the area in which

the complaint alleges wrongful acts. The information on the organization relates solely to the professional activities of the organization and is not derogatory.

7. The type of information sought by the plaintiffs is sensitive to the national security of the United States and, despite its age, is still properly classified under Executive Order 11652. Release of this type of information would have the following deleterious effects:

a. Release would reveal the extent to which the United States has been able to identify particular individuals and organizations as information collectors for Soviet and Eastern European intelligence services. It would reveal also the names of particular information collectors who, despite their cover identifies, have been identified by U.S. intelligence. Information of this sort could be of obvious value to hostile intelligence services.

b. Release of the information would indicate in part the capacity of the United States Army to monitor the activities of East Berlin organizations from locations within West Berlin.

c. Release of the information would partially reveal the capabilities and techniques of the Army intelligence operation that collected the information.

8. There is an additional reason why information relating to this Army intelligence operation should not be released. This operation is run by the Army on behalf of the federal government. It also responds to requests from foreign governments, which are particularly concerned about the secrecy of the operation. Our diplomatic relationships with these governments and our ability to

obtain valuable information from them would be appreciably weakened if the information plaintiffs now seek were publicly released. Although the documents plaintiffs seek do not specifically reflect the involvement of foreign governments, revelation of the activity's scope can impact on such governments. Moreover, very similar documents do reflect such involvement and release here may serve as a precedent which will ultimately result in the release of such documents. Both effects could significantly damage U.S. national security interests.

9. In view of the above, I certify that it would prejudice the public interest and the national security of the United States to disclose the information sought by the plaintiffs in this case. Accordingly, pursuant to the lawful authority of the Secretary of the United States Army, I assert a formal claim of executive privilege over the Army information contained in the 34 pages of material.

10. I have executed a classified affidavit to be provided to the Court ex parte and in camera along with copies of the 34 pages of material. This affidavit explains more fully the content of the documents and elaborates upon the reasons mentioned above why disclosure would be damaging to the national security.

I declare under penalty of perjury that the foregoing is true to the best of my knowledge and belief.

Clifford L. Alexander, Jr.
Secretary of the Army

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	CIVIL ACTION NO. 76-1326 Filed: March 15, 1978

NOTICE OF FILING CLAIM OF PRIVILEGE BY THE DIRECTOR OF CENTRAL INTELLIGENCE AND SUBMISSION OF IN CAMERA EXHIBIT

Please take notice that defendant William H. Webster, Director, Federal Bureau of Investigation, pursuant to this Court's order of June 24, 1977, has filed the attached AFFIDAVIT of John F. Peyton, Jr., Assistant General Counsel, Central Intelligence Agency, and has submitted for the Court's ex parte, in camera examination the classified Affidavit and Claim of Privilege by the Director of Central Intelligence.

DATED: March 15, 1978

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney

DAVID J. ANDERSON

DAVID H. WHITE

Attorneys, Department of Justice
Washington, D.C. 20530
Telephone: (202)739-4269

Attorneys for defendant
William H. Webster

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

AFFIDAVIT

John F. Peyton, Jr., being first duly sworn, deposes and says:

1. In connection with discovery, twenty-two documents or portions of documents originating with or containing information originating with the Central Intelligence Agency (CIA) were forwarded by the Federal Bureau of Investigation (FBI) to the CIA for review.

2. In a classified Affidavit and Claim of Privilege executed on 15 February 1978, the Director of Central Intelligence, as head of the CIA, identified three grounds for denying release of certain information: the information is currently and properly classified pursuant to Executive Order 11652; the information, if released, would reveal intelligence sources and methods, the unauthorized disclosure of which is prohibited by section 102(d)(3) of the National Security Act of 1947 (50 U.S.C. §403(d)(3)) and section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C. §403g); and that the information, if released, would reveal secrets of state requiring protection from disclosure.

3. Attached to this affidavit and incorporated herein by reference is a copy of the Director of Central Intelligence's Affidavit and Claim of Privilege from which all classified statements have been deleted. This redacted copy of the Affidavit and Claim of Privilege provides notice as to the type of information withheld and the basis for withholding for each document except as to documents contained in Exhibits J and K. No public comment can be made concerning the information deleted from these two documents.

John F. Peyton, Jr.
Assistant General Counsel
Central Intelligence Agency

COMMONWEALTH OF VIRGINIA)
) ss.
COUNTY OF FAIRFAX)

Subscribed and sworn to before me this 6th day of March 1978.

Notary Public

My commission expires 20 March 1981.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

AFFIDAVIT AND CLAIM OF PRIVILEGE
BY THE DIRECTOR OF CENTRAL INTELLIGENCE

Stansfield Turner, being first duly sworn, deposes and says:

1. I am the Director of Central Intelligence. I have served in that office since 9 March 1977.

2. As Director of Central Intelligence, I am the executive head of the Central Intelligence Agency (CIA). The CIA was established by the National Security Act of 1947, 50 U.S.C. §402, et seq., as was the position of Director of Central Intelligence.

3. Under section 102(d) of the National Security Act of 1947, 50 U.S.C. §403(d), it is the responsibility of the CIA to perform intelligence functions relating to the national security under the direction of the National Security Council.

4. A particularized statement of the authorities of the CIA is set forth in section 1-8 of Executive Order 12036, issued by the President on 24 January 1978. That order superseded Executive Order 11905, which became effective on 1 March 1976 and which contained a closely parallel statement of CIA authorities. Section 1-8 of Executive Order 12036 provides:

1-8. The Central Intelligence Agency. All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by the National Security Act of 1947, as amended, the CIA Act of 1949, as amended, and other laws, regulations and directives, the CIA, under the direction of the NSC, shall:

1-801. Collect foreign intelligence, including information not otherwise obtainable, and develop, conduct, or provide support for technical and other programs which collect national foreign intelligence. The collection of information within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General.

1-802. Produce and disseminate foreign intelligence relating to the national security, including foreign political, economic, scientific, technical, military, geographic and sociological intelligence to meet the needs of the President, the NSC, and other elements of the United States Government;

1-803. Collect, produce and disseminate intelligence on foreign aspects of narcotics production and trafficking;

1-804. Conduct counterintelligence activities outside the United States and coordinate counterintelligence activities conducted outside the United States by other agencies within the Intelligence Community;

1-805. Without assuming or performing any internal security functions, conduct counterintelligence activities within the United States, but only in coordination with the FBI and subject to the approval of the Attorney General;

1-806. Produce and disseminate counterintelligence studies and reports;

1-807. Coordinate the collection outside the United States of intelligence information not otherwise obtainable;

1-808. Conduct special activities approved by the President and carry out such activities consistent with applicable law;

1-809. Conduct services of common concern for the Intelligence Community as directed by the NSC;

1-810. Carry out or contract for research, development and procurement of technical systems and devices relating to authorized functions;

1-811. Protect the security of its installations, activities, information and personnel by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary;

1-812. Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections 1-801 through 1-811 above, including procurement and essential cover and proprietary arrangements.

1-813. Provide legal and legislative services and other administrative support to the Office of the Director of Central Intelligence.

5. Section 2 of Executive Order 12036 sets forth restrictions applicable to CIA activities. Similar although not identical restrictions were set forth in section 5 of Executive Order 11905. Copies of section 2 of Executive Order 12036 and section 5 of Executive Order 11905 are attached hereto and incorporated herein by reference.

6. Section 102(d)(3) of the National Security Act of 1947, 50 U.S.C. §403(d)(3), provides in part: "That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

7. The CIA Act of 1949, 50 U.S.C. §403a, et seq., implements the provision of the National Security Act of 1947 that makes the Director of Central Intelligence responsible for protecting intelligence sources and methods from unauthorized disclosure. In that regard, section 6 of the CIA Act of 1949, 50 U.S.C. §403g, exempts the CIA from provisions of law that might otherwise require the publication or disclosure of the functions of CIA personnel, or other particulars relating to such personnel.

8. I have been informed that in connection with discovery the Court has ordered the Federal Bureau of Investigation (FBI) to produce the entire contents of files it maintains concerning plaintiffs. As a result, 22 documents originating with or containing information originated by the CIA were forwarded to this Agency for review prior to release. The purpose of this affidavit is to invoke my statutory responsibility to protect intelligence sources and methods from unauthorized disclosure and to claim secrets of state privilege with regard to five of those documents in their entirety (Exhibits A-E attached) and with regard to portions of eight of those documents (Exhibits F-M attached). I have personally reviewed each of the 13 documents in question.

9. Exhibits A through E consist of information supplied to CIA by foreign intelligence services in the context of three intelligence liaison relationships.

10. Confidentiality is the keystone of successful relationships between intelligence services. This applies to CIA's relationships with all foreign intelligence services with which it maintains liaison, both those in countries having friendly and cooperative relations with the United States and those in countries having more strained relations with the United States. No intelligence service can or will tolerate a situation in which it is identified as the source of information made public in another country, or in which the nature of its relationship with another intelligence service is publicly disclosed. If Exhibits A through E were to be publicly disclosed, the conclusion likely to be drawn by CIA's foreign intelligence partners is that CIA lacks the will or capacity to protect information acquired through liaison channels. This perceived breach of confidentiality could not be avoided by deleting information in the documents which identifies by name the foreign intelligence service or the country involved. That is so because, assuming deletion and release of the documents,

it would still be evident to the foreign intelligence services that information shared by them with CIA in confidence had been publicly disclosed, and because the sources of that information might well be evident to plaintiffs, or at least discernible by inference.

11. Release of Exhibits A through E would have a harmful and chilling effect on all CIA's liaison relationships with foreign intelligence services, not just on the relationships with the services whose information would be exposed. These relationships are vital assets of the United States because of the flow of intelligence that they make possible and because in some cases they provide a channel of communication with foreign governments whose official posture toward the United States is other than friendly. These relationships are also fragile and heavily reliant on understandings of secrecy. If the understandings are violated, liaison of this nature becomes impossible and an extremely valuable link is lost. Accordingly, it is one of my paramount responsibilities as Director of Central Intelligence to protect the confidentiality of the relationships between CIA and the intelligence services of other countries.

12. Exhibits F and G contain information which reveals CIA's relationship with two other foreign intelligence services, and it is that information to which the privilege claims pertain. The remaining information contained in these documents need not be withheld. Exhibits F-1 and G-1 are copies of Exhibits F and G, except that the privileged items of information have been deleted. That is, Exhibits F-1 and G-1 are copies of the documents as they could be released, and a comparison of these copies with the corresponding Exhibits F and G will show the items of information encompassed by the privilege claims.

13. The privileged information in Exhibits A through G evidences foreign liaison arrangements with friendly countries as well as those countries whose public posture toward the United States is other than friendly. The simultaneous compromise of the relationship of CIA with five foreign intelligence services, including services of countries whose public posture toward the United States is non-cooperative, would be a heavy loss.

14. The privilege claims asserted with respect to documents H and I are explained in the following paragraphs.

15. The clandestine collection of intelligence abroad is a function performed by CIA pursuant to the provisions of Executive Order 12036, see paragraph 4, supra, and under the direction of the National Security Council pursuant to the authority of the National Security Act of 1947 (50 U.S.C. 403) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a). Performance of this function requires the cooperation of human agents and sources willing to act on CIA's behalf on either a voluntary or paid basis. Such individuals can be expected to cooperate with the CIA only so long as they feel secure in the knowledge

that they are protected from retribution by an absolute pledge of secrecy that surrounds the relationship. These individuals, who are typically citizens of the countries in which they operate, are usually motivated by strong personal convictions compatible with United States interests. Such sources frequently work in hostile political environments at great personal risk and face harsh retaliation from foreign governments or groups including imprisonment or, in extreme cases, death, should their cooperation with the CIA be exposed. The exposure of even one such source would have a predictable destructive effect on CIA relations with all sources and on CIA's ability to recruit other vitally needed sources in the future. The hazards I previously enumerated in discussing the compromise of one liaison arrangement apply even more strongly to individual sources. If CIA were shown to be incapable of protecting its relationships with any one source who has staked his liberty, his reputation and, possibly, his life on CIA's assurance of permanent secrecy, the inference thus drawn by other currently active sources and potential sources would have an obviously chilling effect on CIA's ability to do its work. Additionally, the embarrassment to the United States Government occasioned by the exposure of a CIA source in a foreign country, particularly where the foreign government is friendly to or maintains liaison with the United States Government or CIA, can result in grave disruption to United States foreign relations.

16. Exhibit H contains information which could lead to the identification of an individual source of foreign intelligence.

Exhibit H-1 is a copy of Exhibit H, except that the privileged items of information have been deleted. I am prepared to release Exhibit H-1 which, if compared with Exhibit H, will show the items of information encompassed by the claim of privilege.

17. Exhibit I contains information indicating that a source of this Agency came into possession of a telephone address book of one Available CIA records do not reflect who this source was or how the source came into possession of the telephone address book. However, it is evident from the face of this document that could identify the source should the document be released in its entirety. Exhibit I-1 is a copy of Exhibit I, except that the privileged information has been deleted. I am prepared to release Exhibit I-1.

18 Exhibits J and K

Exhibits J-1 and K-1 are copies of Exhibits J and K, except that the privileged information has been deleted. I am prepared to release Exhibits J-1 and K-1.

20. I have also directed that in most cases the names of most CIA employees be deleted from Exhibits L and M prior to their release. Section 6 of the Central Intelligence Agency Act (50 U.S.C. 403g) provides in pertinent part:

> In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 403(d)(3) of this title that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of section 654 of Title 5, and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency; . . .

21. This Agency does not rely on this statute as a blanket exemption with respect to disclosure of the names of CIA employees. In this case, for example, the names of the former Director of Security and the former Chief of the Counterintelligence Staff have not been withheld since, by virtue of their senior positions, their association with the Agency need not be protected against disclosure. However, in most instances the names of CIA employees cannot be disclosed. Such employees may have in the past served under cover or in sensitive

positions, may now be doing so, or may do so in the future. Their identification may result in the compromise of past, current or future intelligence operations, impair the usefulness of such individuals to the Agency by limiting future assignments and may even place their lives or the lives of members of their families in jeopardy. The death of Richard Welch in December 1975 while serving in Athens is a gruesome example of the possible consequence of public identification of our employees.

22. There are additional reasons which require the withholding of the names of CIA employees. As mentioned with reference to the need to protect CIA relationships with foreign intelligence services, no foreign country, even friendly countries which maintain relations with the United States Government and CIA, can permit a public acknowledgment of the presence of a foreign intelligence operative, in this case the CIA, in their own country. The disclosure of the identity of an individual as a CIA officer, if such officer is now or in the past has been posted to a foreign country, would constitute an official acknowledgment of a CIA presence in that country. While press exposure of such matters has been widespread and troublesome, such exposure can usually be dealt with by foreign governments with the explanation that such press reports are not known to the foreign government to be accurate, such explanations are not available when the identification of CIA employees has the official sanction of this Agency. Such would be the case should I or any other official of this Agency authorize the release of CIA documents which contain such names. Such an official acknowledgment could result in diplomatic repercussions affecting relations between governments and could severely restrain or completely curtail CIA's access to such areas of the world.

23. Many of the names withheld are CIA language instructors who served under cover. While such employees typically do not serve overseas and thus are not exposed to the physical dangers which overseas duty may entail, they

are involved in the extremely sensitive work of, for example, debriefing defectors, and the instruction of CIA employees who will serve overseas. These instructors are thus in a position to identify large numbers of CIA employees preparing for overseas under cover assignments. Such duties make these language instructors the prize targets of foreign intelligence service agents operating in the United States. The Director of the Federal Bureau of Investigation has recently stated that the KGB, the Russia intelligence service, is operating in very large numbers within the United States. It is vital to the security of the nation that efforts of these foreign agents be thwarted, whereas those efforts could only be aided by public disclosure of the CIA employees whose names I have caused to be deleted. Exhibits L-1 and M-1 are copies of Exhibits L and M, except that the privileged information has been deleted. I am prepared to release Exhibits L-1 and M-1.

24. As head of an executive agency, namely, the CIA, I hereby assert the state secret privilege. I hereby also assert the statutory privilege arising from section 102(d)(3) of the National Security Act of 1947, 50 U.S.C. §403(d)(3), specifically from the provision making the Director of Central Intelligence responsible for the protection of intelligence sources and methods from unauthorized disclosures. These claims of privilege extend to the matters described in paragraphs 9-23 above. I believe that all the information within the scope of these privilege claims meets the standards for classification at the level of Secret, in accordance with the provision of Executive Order 11652, which governs the classification of information requiring protection in the interest of national security.

25. I have determined that it is appropriate under Executive Order 11652 to classify this affidavit Secret. I therefore respectfully request the Court to

examine and to control this document under security procedures designed to prevent disclosure of its contents to unauthorized individuals. It is further requested that this affidavit be returned to the Department of Justice for storage pursuant to 28 C.F.R. §17.48(c), under seal of the Court.

Stansfield Turner

COMMONWEALTH OF VIRGINIA)
) ss.
COUNTY OF FAIRFAX)

Subscribed and sworn to before me this 15th day of February 1978.

Rebecca S. Baker
Notary Public

My commission expires 20 March 1981

23 APR 1979

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al.,	)	
Defendants.	)	

PLAINTIFF WASHINGTON PEACE CENTER'S
SUPPLEMENTAL RESPONSE TO FEDERAL DEFENDANTS'
THIRD SET OF INTERROGATORIES

Plaintiff Washington Peace Center, by and through its undersigned representatives, submits supplemental responses to the Federal Defendants' Third Set of Interrogatories as follows:

Question 30. State with particularity, including date, place, source, and circumstance, the manner in which persons acting for plaintiff learned the names of Terry O'Connor, Robert Feuer, Robert Yates, Charles Sawyer, and David Rarity.

Supplemental Response 30. For several months prior to filing the original complaint in this action (July, 1976), counsel for the Plaintiff interviewed a number of persons in the Washington, D.C., area who had, or claimed to have, knowledge about FBI surveillance of local peace groups. Among the persons contacted were Robert Merritt, a former informant employed by the FBI in the Washington, D.C., area;

Tim Butz, an individual associated with Vietnam Veterans Against the War (an organization that had been active in peace demonstrations and had had some contact with the Peace Center) and counsel for the Institute for Policy Studies, a local research group that had filed a suit similar to the instant action. The names of Messrs. O' Connor, Feuer, Yates, Sawyer and Rarity were given to counsel by these sources as FBI agents from the Washington, D.C., office who were known or believed to have had some contact or responsibility for surveillance of local peace groups.

Question 32. State in detail the information upon which plaintiff bases its belief and allegations that O'Connor, Feuer, Yates, Sawyer, and/or Rarity took any action affecting plaintiff, and state, in detail, the source of that information.

Supplemental Response 32. The Plaintiff Washington Peace Center was active during most of the 1960's as a central meeting place and clearinghouse for activities focused on ending the war in Vietnam and related issues. The Peace Center believed, and the discovery to date in this action has confirmed, that it was the subject of extensive surveillance by FBI agents, informants or employees. Messrs. O'Connor, Feuer, Yates, Sawyer and Rarity had, upon information and belief, some responsibility for surveillance of local peace groups and since the Peace Center had contact with most local peace groups, it was assumed that any FBI personnel involved in surveillance of such groups would have contact with the Peace Center, either directly or indirectly.

Question 33. State whether the record or proceedings in the civil action Institute for Policy Studies, et al. v. John N. Mitchell, et al., (D.D.C.) Civil Action No. 74-316, had any bearing on the selection of defendants in this action. If so,

(a) State the connection between that civil action and this action which justifies naming O'Connor, Feuer, Yates, and Sawyer as defendants in this action.

(b) State why this reliance on the documents in IPS v. Mitchell was not disclosed in answer to previous discovery demands by the federal defendants.

Supplemental Response 33. Yes.

(a) The Defendants indicated were not named as Defendants in this action simply because they were named in I.P.S. v. Mitchell, as explained in Supplemental Response 30, above. This suit and I.P.S. v. Mitchell are very similar actions, since both seek damages for unlawful surveillance committed during the 1960's by the FBI; in both cases the surveillance was directed at lawful, political activities of groups characterized by the FBI as the "New Left" or peace activists. For this reason, and the reasons indicated in Supplemental Response 30, above, the indicated Defendants were named in this action.

(b) Plaintiff does not know which previous discovery demands by the federal defendants are meant; Question 33 does not appear to refer to anything covered by such demands.

District of Columbia, ss:

I, DAVID FLEISHMAN, being duly sworn depose and say that I have read the foregoing Supplemental Response to Federal Defendants' Third Set of Interrogatories and that they are true and correct to the best of my information and

belief.

Subscribed and sworn to before me this 21st day of April, 1978.

Nancy L Alonso
Notary Public

David Fleishman
for Plaintiff Washington
Peace Center

My commission expires:

April 14, 1983

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

PLAINTIFF WASHINGTON PEACE CENTER'S
SUPPLEMENTAL RESPONSE TO FEDERAL DEFENDANT'S
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

Request 2. All newsletters, letters, or other materials distributed by or under the authority of Plaintiff which contain references to this civil action or to the filing of this civil action.

Supplemental Response 2. A copy of Plaintiff's newsletter for October-November 1975 is attached.

David Rein

David Rein

Daniel M. Schember

Daniel M. Schember

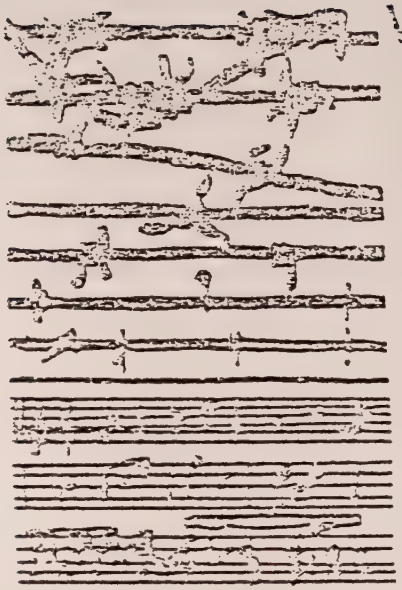
Of Counsel:

Ralph J. Temple

Anne Pilsbury

Anne Pilsbury

Attorneys for Plaintiffs



WASHINGTON PEACE CENTER NEWSLETTER

OCTOBER-NOVEMBER 1975

2111 Florida Avenue N.W. Washington, Columbia 20008
Enter on Decatur Place (202) 234-2000

Action Planned On Break ins

Attorney David Rein has volunteered his help in suing for damages in the break ins and other illegal police state activities that occured during the height of the Peace Movement. Anne Pilsbury and other members of the D.C. Committee for the Bill of Rights will aid in the effort. Suspected victims include: Community Book Store, Washington Peace Action Council, Women's Strike for Peace, I.C.T.C., Black United Front and a number of individuals who suspect they may have been subject to wiretaps or who had their homes broken into. Many organizations will charge police with planting informants that encouraged acts (some violent) that the organizations did not want. If you think you (or your organization) was a victim of police or federal survailance, wiretapping, break ins, subversion etc. call David Rein at 628-4047 or Anne Pilsbury 628-4195 (days) or 543-4405 (nites). Its important many groups and people participate so that a strong case can be made. A fund raiser party will be held for the D.C. Committee for the Bill of Rights at the Echevarria's 2706 Olive Street in Georgetown Saturday November 1st at 8:00 P.M.

9 ORGANIZATIONS WALK FOR PEAC

American Friends Service Committee, War Resisters League, Catholic Peace Fellowship, Catholic Worker, Clergy & Laity Concerned Fellowship of Reconciliation, Sane, Women Strike for Peace and Women's International League for Peace & Freedom have formed The Continental Walk for Disarmament and Peace to push for unilateral action toward disarmament in order to help create a more decent and just society and to encourage cooperation among people working for peace, social change and sexual, racial and economic justice

The walk should arrive here (it starts in San Francisco and ends in Washington) aroun

(con't on pg 3)

MOVEMENT CALENDAR

October

10/22 Anti-Handgun March U.S. Capitol 11:30 A.M. Representatives and Senators will attend Call 544-7190

10/23 Women's Consciousness Raising Groups to be formed at All Soul Church 16th & Columbia at 8:00 P.M. Call Miriam Peloc 544-8907

10/24 Margie Adam, singer sponsored by the Feminist Radio Network St. Marks 3rd & E Streets S.E. 8:00 P.M.

24th to the 27th N.O.W. National Conference Phila, Pa Call 387-6895

Women's Film Festival 8:00 PM Magic Lantern

10/25 Seminar: "Learning The Disciplines of NonViolence" Arlington Church of the Brethern 300 N Montague Str. Reservations 703-524-4100

Bazaar Quaker House Florida Ave. Records, books & other goodies 10:00 A.M. to 4:00 P.M.

10/26 Holly Near, singer & peace activist St Marks 3rd & E Streets SE 8 P.M. Benefit for Bread and Roses

Tribute to Heschel: A sharing of resources for ongoing work for peace & justice. Westmorland Congregational Church/Westmorland Circle: out Mass. Ave. Light Vietnamese Supper 5 to 8:00 P.M. Call Sally Benson 223-0527

10/29 Hearings on N.A.C. power City Council

"ALICE DOESN'T" Women's General Strike Shoulder to Shoulder March White House NOON

Nat'l Town Meeting Kennedy Center 10:00 A.M.

Men's Support Groups to be formed at All Souls Church 8:00 P.M. Call Bill Munger 232-6559

10/31 Meg Christian, singer St Marks 8 PM

November

11/1 Fund Raising Party for the D.C. Committee for the Bill of Rights. Civil Rights lawyers Dave Rein and Burt Wexler will be there to speak on "Illegal Police Activities Against Washington Organizations" 8:00 P.M. Echevarria's 2706 Olive Street Georgetown

11/2 Palestinian Poetry Reading Holy Bagel Coffee House 7:00 P.M. Tzedek, Tzedek

"Community Health Care: Preventive Medicine or Acute Care?" Kathleen Quest-Smith & Joyce Watt nurses Emmaus 2 PM 3619 12th N.E

11/5 Women's Strike for Peace General Meeting 8:00 P.M. Nancy Ramsey's 1826 Varnum Street N.W. 723-6177

11/8 D.C. Power Conference 9 A.M. - 1:00 P.M. "Power Is More Than Electric" Utility organizing, corp. links between banks, big biz, and utilities, community action against Pepco etc. St. Marks 3rd & A Streets S.E. $1.00

11/12 Fund for Life, Washington Area open meeting 8 P.M. World Peace Tax Fund Office 2111 Florida Ave N.W. (enter on Decatur Pl.) Further info: Ron Bo[illegible] 387 - 7955

11/13 Karen Silkwood Memorial Howard University Call 546-7397

11/16 "Alternative Life Styles" Mark Looney Strongforce Harry Schwarz, hippie traveling with dog. Emmaus 2 PM

PART WAY AMNESTY

The Kastenmeier Sub-committee has voted out the Vietnam Era Reconciliation Act of 1975 (H.R. 9596). This Bill as presently written would provide immunity from prosecution for some categories of war resisters. It does not provide a total amnesty. The National Council for Unconditional and Universal Amnesty urges that when the Bill is debated by the full House Judiciary Committee we write to Congress ask for total amnesty and compare H.R. 9596 with NCUUA's total amnesty Bill (get copies from NCUUA 235 East 49th Street N.Y.C. 10017). They are urging their Bill get exposure at press conferences; organized vigils at local V.A. offices and debates etc.

The Massachusetts Coalition for Amnesty is having a statewide meeting Saturday October 25th at the College of the Assumption in Worchester sponsored by Gold Star Parents. Call Pat Simon (617) 742-2100. A West Coast Conference is also planned.

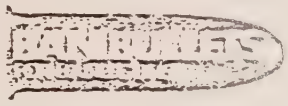
Of all the presidential candidates running so far only three have endorsed total amnesty:Bayh, Harris & Udall.

Hi! I'm Bill Munger, the new staff person.

I'd like to introduce myself and hope you who have built the Peace Center will call or visit me. My work in the Peace Movement began in 1965 with organizing speakers at the University of Wisconsin. Later I helped staff the first national organization against the war: The Nat'l Co-ordinating Committee to End the War in Viet Nam. I worked with the Milwakee Organizing Committee and in Cleveland with P.C.P.J. and N.P.A.C. In the last three years I've been active in the National Organization for Women and am founding member of Washington Men's Awareness Network. And just a short plug for W.M.A.N... we start men's support groups each month. Call me if you are interested.

HAND GUN CONTROL

(Washington October 7) Members of The Committee for Hand Gun Control, Inc. picketed the National Rifle Association to point out the N.R.A. fights gun control in any form and strongly supports a new bill which would mandate spending close to $16 million in tax funds annually to teach more people to use and love guns. The Committee pointed out that a child born in America last year is more likely to be murdered than a World War II soldier was likely to die in combat. In N.Y.C. over 70% of the guns used in crime were "quality" weapons not "Saturday Night Specials." In Greenville, S.C., a review of 17 gun dealers records over a six month period revealed that 73 persons purchasing firearms were convicted felons who has committed murder, rape, assault and armed robbery. In 1974, 970 men, women and children were murdered in Chicago. Of the 970, the police reported 669 were killed by firearms and [illegible] by handguns. The handgun is used in [illegible] of all homicides in the country each year. Each day close to 70 persons are killed by guns in the U.S. - more than 25,000 annually. Every year some 200,000 are injured, robbed, raped and otherwise threatened at the end of a gun. THERE WILL BE A GUN VICTIMS [illegible], OPEN TO ALL ON THE EAST CAPITOL STEPS AT 11 A.M. Wednesday October 22nd... for further information write: The Committee for Handgun Control Inc. 111 East Wacker Drive Chicago Illinois 60601.



Unless you are member or friend of the Peoples Party or Statehood Party you may not be familiar with our use of Washington, Columbia. Columbia it is hoped will be the 51st State!

The Washington Peace Center Newsletter, October-November 1975 is published by the Washington Peace Center, 2111 Florida Avenue, N.W. Third Class Postage paid at Washington, Columbia. Our office is open Monday through Friday 8:00 A.M. to 4:00 P.M. Phone 234-3000 You can call Bill Munger at 232-6559. Please let it ring to leave a message.

To Defy U.S. on Aid Licenses Washington Post - July 29, 1975

Quakers Pursue Vietnam Relief Efforts

"...American voluntary organizations are explicitly barred from sending economic and development aid to affiliated institutions in Vietnam—aid they were permitted to supply even while the war was raging! President Ford himself imposed this ban....

"Fishnets and tractors donated by private Americans...are symbolic of the change in official American attitudes which will have to occur if the United States ever expects to play a more constructive role in Vietnam's peace than it did in Vietnam's war."

N.Y. Times editorial, 8/18/75

"The U.S. government is dead wrong. It should grant the license without delay."

Des Moines Sunday Register editorial, 8/3/75

Join A.F.S.C.'s

Act for Friendship

with Vietna

ACT FOR FRIENDSHIP WITH VIETNAM

DONOR'S FORM

TO: American Friends Service Committee
c/o closest Area or Regional Office

Enclosed is a check for $_____, a contribution designated for the following:

- Fishnets for use in South Vietnam
- Agricultural implements including rototillers for use in South Vietnam
- Wood screw-making machines for use by war-handicapped people in a cooperative workshop on Kham Thien Street in Hanoi, North Vietnam

I understand that the Treasury Department, acting at the direction of President Ford, has invoked the Trading with the Enemy Act to deny AFSC licenses to ship these goods. Led by its religious and moral commitments, the AFSC decided to meet these Vietnamese requests, as well as others which do have US government approval.

By contributing this money, I wish to be associated publicly with AFSC in an act which may be interpreted as a violation of the law. Howeve[illegible], I share with AFSC the conviction that as individual citizens and as a nation, we are morally obligated to contribute to the reconstruction of the war-devastated countries of Indochina.

I also share AFSC's hope that our government cease to regard the Indochinese nations as enemies, but instead initiate positive relationships with them, including normalization of diplomatic, trade, and cultural relations.

Name _____ Street Address _____

City _____ State _____ Zip _____ Phone _____

(Xerox copies of this signed statement and your check will be presented by AFSC to the local U.S. Attorney, President Ford, your Senators and Representative.)

☐ I am considering participating in the November 10th witness. Please contact me.

HUMANITARIAN AID BLOCKED

Calling fish nets, rototillers and wood screw machines bound for Viet Nam "economic" and not "humanitarian" aid the Government has denied an export license to the American Friends Service Committee. Those shipping without a license are subject to fines of up to $10,000 and imprisonment of up to ten years. This will not stop the A.F.S.C. and on November 10, 1975 they plan to do something about it. You can join:

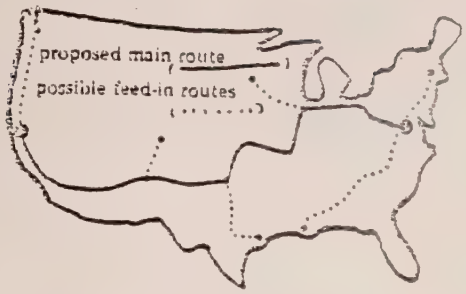
10:00 A.M. Meeting for Worship at the Friends Meeting of Washington

11:30 A.M. Moral Witness at the White House

1:00 P.M. Lunch and legislative briefing Friends Committee on National Legislation 245 2nd Street N.E.

2:00 P.M. Visits with key Senators and Representatives

Also, will you please fill out the form in this Newsletter? For further details contact Marshall Sutton, Clerk Friends Meeting of Washington 332-1136



September 1976... it will begin in San Fra cisco in February 1976. The Washington Peace Center hopes to prepare a large welcome for the marchers and to prepare suppo projects as the Walk is on the way. Thos interested in working on the Walk locally and nationally should contact the W.P.C. & The Continental Walk 339 Lafayette Street N.Y.C. 10012

MUSEUM PIECES?

According to New Times the Pentagon might have its way next spring and Congress will give its final approval for production lines at Rockwell International to start turning out what will eventually become a squadron of 244 B-1's. They are about the same size as the 707 jetliner and fly around 1,000 miles per hour. The question is: how did the Air Force sell Congress a $70 billion bomber that will reach Moscow several hours after World War III is over? We can add it to our other museum piece, the 1.48 billion dollar B-70. To get the B-70 off the ground we were told we needed something to "look down" and shoot down Soviet AWACS which would be in full force by mid 1970. But by 1975 the Soviets have not even deployed a single AWACS according to Secretary of Defense James Schlesinger. By the end of the war in 1972, the B-52's had dumped more tons of high explosives on Indochina than was dropped in both World War II and the Korean War combined. We don't need to multiply that kind of capability!

"... that the C.I.A. as now constituted be abolished. Then its presumably able and useful sections devoted to the straight collection and analysis of intelligence could be reorganized into a successor agency unburdened and unsullied with 'covert' operations and vast secret powers to overturn governments, harass other nations, subvert or kill their leaders, and thwart their legitimate aspirations. Such powers not only have no place in a decent society; but if permitted will almost inevitably be turned against the society that grants them." - Tom Wicker, New York Times The Peace Center is thinking about dialogue and spe out action around the C.I.A. where it lives, where its children go to school and where it shops. If you'd like to join us call 234-1[illegible]

2111 Florida Avenue N.W.
Washington, Columbia 20008

BULK RATE
U.S. POSTAGE
PAID
Permit No. 42519
Washington, D.C.

Phillips Weissberger

We have an attractive speakers bureau leaflet ready. Please call us... 234-2000

Join Us!

___ I wish to work with the ___ Amnesty ___ Non-Violence ___ C.I.A. ___ Domestic Spying ___ Continental Peace Walk issues.

___ I pledge monthly, quarterly, when I can (circle one) $_____

___ I enclose $5.00 for one calendar year subsription to the NEWSLETTER.

___ Please correct my name and address. If incorrect, please include o

___ Enclosed is $_____ contribution to the WASHINGTON PEACE CENTER. (fully tax deductible)

___ Add my name to your telephone tree. ___ I can also volunteer time

Name _____ Phone(s) _____

Street _____

City _____ State_____ Zip _____

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	Civil Action No. 76-1326

FILED

NOV 14 1978

JAMES F. DAVEY, Clerk

ORDER

Upon consideration of plaintiffs' motion for disclosure of documents included in federal defendants' in camera exhibit E, and it appearing to the Court that such documents have in fact been disclosed to plaintiffs, it is this 14th day of November, 1978

ORDERED, that plaintiffs' motion for disclosure of documents included in federal defendants' in camera exhibit E be, and hereby is, denied.

J. H. Pratt
John H. Pratt
United States District Judge

P-034-C

FPI-MAR—10-6-77

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON *et al.*, Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
CHIEF JERRY V. WILSON *et al.*, Defendants.	)	

FILED
AUG 31 1978
JAMES F. DAVEY, CLERK

ORDER

Upon consideration of the four claims of privilege asserted herein and of plaintiffs' opposition thereto, and for the reasons stated in the Memorandum Opinion entered this day, it is by the Court this 31st day of August, 1978,

ORDERED, that the claim of privilege asserted by the Attorney General, filed herein September 22, 1977, be, and hereby is, upheld; and it is further

ORDERED, that the claim of informant privilege asserted by the Attorney General, filed herein December 15, 1977, be, and hereby is, upheld; and it is further

ORDERED, that the claim of privilege asserted by the Secretary of the Army, filed herein February 23, 1978, be, and hereby is, upheld; and it is further

ORDERED, that the claim of privilege asserted by the Director of Central Intelligence, filed herein March 15, 1978, be, and hereby is, upheld.

John H. Pratt
United States District Judge

P-034-C FPI-MAR—10-6-77

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON *et al.*, Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
CHIEF JERRY V. WILSON *et al.*, Defendants.	)	

FILED

AUG 31 1978

JAMES F. DAVEY, CLERK

MEMORANDUM OPINION

This is an action by eleven individual and institutional plaintiffs[1/] against agencies and individual employees and officers of the District of Columbia and the United States arising out of intelligence activities alleged to have been conducted against plaintiffs in violation of their constitutional and common law rights. In Orders dated April 19, 1977, May 16, 1977, and June 24, 1977, we directed the federal defendants to produce for plaintiffs certain records, subject to any claims of privilege which might be asserted on behalf of any agency of the United States. Four such claims have been asserted and filed herein by means of a Notice of Filing by the Director, Federal Bureau of Investigation:

(1) a claim filed September 22, 1977, by Attorney General Griffin B. Bell, accompanied by his affidavit and four *in camera* exhibits;

(2) a claim filed December 15, 1977, by Attorney General Bell regarding informant privilege, accompanied by an *in camera* exhibit;

1/ The claims of Julius Hobson were dismissed by Order of April 20, 1978, for failure to substitute following suggestion of his death on the record, but he has not been dropped as a party plaintiff, Fed. R. Civ. P. 21.

9-034-C

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(3) a claim filed February 23, 1978, and asserted by Secretary of the Army Clifford L. Alexander, Jr., accompanied by the Secretary's affidavit and an in camera exhibit; and

(4) a claim filed March 15, 1978, and asserted by the Director of Central Intelligence, accompanied by the affidavit of John F. Peyton, Jr., Assistant General Counsel, Central Intelligence Agency, and the in camera affidavit of the Director.

We consider first the three claims (Claims 1, 3, and 4) asserting executive privilege and state secrets privilege. Each claim complies with the requirement of United States v. Reynolds that "[t]here must be a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by the officer." 345 U.S. 1, 7-8 (1953). In each instance the claim consisted of a public affidavit setting forth the general basis of the claim, with one or more in camera exhibits consisting of both affidavits and copies of the material (with one exception, noted below) as to which privilege was claimed. Under the procedures established in United States v. Nixon and related cases, we conducted an in camera inspection of all the material submitted for that purpose. 418 U.S. 683, 714-16 (1973); see Black v. Sheraton Corp. of America, 564 F.2d 531, 544-45 (D.C. Cir. 1977). The recognition courts have extended to claims of privilege varies with the nature of the privilege claimed: "The state secrets privilege is absolute," Halkin v. Helms, Nos. 77-1922, -1923, slip op. at 11 (D.C. Cir. June 16, 1978), but less compelling claims of executive privilege are to be considered under a test which balances the interests weighing in favor of disclosure against those militating against

P-034-C

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disclosure, Black, supra at 542, 545; Dellums v. Powell, 182 U.S. App. D.C. 244, 253, 561 F.2d 242, 251, cert. denied, 434 U.S. 880 (1977). With regard to the one claim (claim 1) with which none of the allegedly privileged material was tendered in camera, we subjected the affidavits submitted in camera to stricter requirements of specificity, Black, supra at 543. Plaintiffs' opposition to this claim assails the Attorney General's affidavit as insufficiently specific, and requests that plaintiffs be permitted to participate in any in camera inspection. Although there is authority for such participation, we consider it both unnecessary and undesirable in this instance. The classified affidavits submitted with the claim were sufficiently specific in pinpointing the specific types of harm which the disclosure of the files in question would engender. With respect to the claims by the Secretary of the Army and the Director of Central Intelligence, the in camera affidavits and documents submitted have persuaded us that these claims too should be upheld in their entirety for the reasons stated in the affidavits. Against these reasons, there appears little in favor of disclosure. Plaintiffs have already received thousands of documents[2/] pertinent to the preparation of their case; their submissions confine themselves to attacking the proposition that the material in question is sensitive rather than articulating any interest, public or particular, which disclosure of the material will serve.

The fourth claim (claim 2), that relating to the informant privilege, was accompanied by the affidavit of the

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2/ Approximately 13,000 pages with deletions. See Plaintiffs' Opposition to Defendant Kelly's Claim of Informant Privilege, p. 1 (filed Feb. 8, 1978).

P-034-C
FPI-MAR—10-5-77

Attorney General, stating that he had determined formally to claim the privilege on the basis of a personal review of what had been presented to him as a "representative sample"[3/] of informant files by Justice Department attorneys. The claim also was accompanied by the affidavit of David H. White, counsel of record for the federal defendants, who recited the basis on which he had compiled the "representative sample" reviewed by the Attorney General. The claim included an in camera exhibit consisting of the "representative sample" itself. Plaintiffs' opposition to the claim rests primarily on the assertions that the informant privilege does not extend to unlawful Government or police activity, and that the so-called "representative sample" reviewed by the Attorney General and submitted in camera with the instant claim may not be representative at all of the files as a whole. The District of Columbia Circuit has explicitly rejected the argument that the informant privilege does not extend to instances of misconduct by the police, Black v. Sheraton Corp. of America, 564 F.2d 550, 554-55 (D.C. Cir. 1977). Rather, the unlawfulness of the police activity, and more specifically the extent to which the informant knew it was unlawful, is a factor to be weighed in the balance between the benefits ensuing from disclosure and the harm flowing therefrom. Id.; see Roviaro v. United States, 353 U.S. 53, 62 (1957); Westinghouse Electric Corp. v. City of Burlington, 122 U.S. App. D.C. 65, 71-73, 351 F.2d 762, 768-70 (1965).

Plaintiffs' point regarding the representativeness of the sample is likewise lacking in merit. It is true that the

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3/ The "representative sample" consists of eleven separate sets of documents, each set relating to one of the eleven named plaintiffs.

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FPI MAR—'0-6-77

Attorney General, the Court, and the plaintiffs personally have no direct means of ascertaining whether the sample in question is representative of the files as a whole. However, the affidavit of David H. White, in describing with specificity the techniques used to cull representative documents from the mass, and categorizing the mass of files, meets the objection. The Supreme Court has approved the technique of representative sampling in the Freedom of Information Act context, EPA v. Mink, 410 U.S. 73, 93 (1973); 5 U.S.C. § 552. The only remaining question, whether the selection techniques assure that the sample is representative, must be resolved in the affirmative here. The documents submitted in camera disclose a discriminating policy of excision, rather than blanket withholding. Further, plaintiffs' opposition to the claim does not articulate any reason why plaintiffs need to know the information which is being withheld. Plaintiffs state that their review of the voluminous files already made available to them discloses patterns of investigation or surveillance of "completely lawful activities." On this ground, we discern no substantial reason weighing in favor of disclosing information identifying or tending to identify informants, and we accordingly resolve the balance test in favor of the claim of privilege.

An Order consistent with the foregoing has been entered this day.

John H. Pratt
United States District Judge

August 31, 1978

P-034-C

FPI MAR—10 6 77

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	CIVIL ACTION NO. 76-1326

NOTICE OF FILING OF CLAIM OF PRIVILEGE
AND SUBMISSION OF IN CAMERA EXHIBIT G

Please take notice that defendant William H. Webster, pursuant to this Court's Order of June 24, 1977, has filed the attached Affidavit and Claim of Privilege by Attorney General Griffin B. Bell. This affidavit is accompanied by the In Camera Exhibit G.

DATED: _____

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney

ALPHONSE M. ALFANO

David H. White
DAVID H. WHITE

Attorneys, Department of Justice
Washington, D.C. 20530
Telephone: (202)633-4269

Attorneys for defendants
William H. Webster

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	CIVIL ACTION NO. 76-1326

AFFIDAVIT AND CLAIM OF PRIVILEGE

City of Washington)
) ss
District of Columbia)

GRIFFIN B. BELL declares the following to be true and correct:

1. I am the Attorney General of the United States and head of the United States Department of Justice, an Executive Department of the United States Government. I have official custody and control of the files and records of the United States Department of Justice. The matters herein are based upon my knowledge and upon personal review and consideration of information available to me in my official capacity.

2. I am aware that the plaintiffs in this action have demanded the production of the Federal Bureau of Investigation files relating to the internal security investigations of plaintiffs. The Federal Bureau of Investigation, through the Assistant Attorney General, Civil Division, has made available to me certain documents from the files pertaining to the Women's Strike for Peace as to which the Bureau has requested I enter a formal claim of privilege. In addition, I have been provided with the classified affidavit of Mr. William O. Cregar, Assistant Director, Intelligence Division, Federal Bureau of Investigation, and a classified affidavit from an Assistant Secretary of State.

3. Having personally considered the information made available to me, I herewith formally claim privilege as to the documents described in this affidavit and which, along with the affidavit of Assistant Director Cregar and the affidavit of the Assistant Secretary of State, constitute in camera Exhibit G. My conclusions regarding this claim of privilege are set out below.

4. Exhibit G

(a) The files pertaining to the Women's Strike for Peace contain a quantity of documents relating to a physical surveillance conducted by the Federal Bureau of Investigation in connection with a foreign intelligence investigation. Although the documents pertain to the Women's Strike for Peace, the physical surveillance was not directed against that organization. The purpose of the physical surveillance was to assist in the gathering of information to meet potential threats to the security of the United States from activities within the United States of certain foreign powers. The subject and purpose of this physical surveillance are more fully described in the classified affidavits submitted for the Court's in camera, exparte examination.

(b) To disclose the documents to plaintiffs would reveal the subject of the foreign intelligence investigation and thus could reasonably be expected to cause serious damage to the national security. Such disclosure would adversely affect the relationship between the United States and other governments and thereby damage or interfere with the implementation or formulation of foreign policy. Accordingly, as Attorney General of the United States, I formally claim privilege as to the documents contained in in camera Exhibit G.

5. I respectfully request that the Court maintain the contents of in camera Exhibit G in a secure fashion and return

the exhibit to the Department of Justice at the conclusion of any hearing in this matter. The Department of Justice will retain these exhibits under the Court's seal subject to any Orders of this Court or other Court of competent jurisdiction.

I declare under penalty of perjury that the foregoing is true and correct.

Executed On:

November 3, 1978

Griffin B. Bell

GRIFFIN B. BELL
Attorney General of the United States

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
vs.	)	Civil Action No. 76-1326
	)	
JERRY V. WILSON, et al.,	)	
	)	
Defendants.	)	

FILED

DEC 13 1978

JAMES F. DAVEY, Clerk

MEMORANDUM ORDER

Defendant William H. Webster has filed a claim of privilege pursuant to this Court's order of June 24, 1977, which directed the federal defendants in this action to produce requested documents subject to any claims of privilege. The instant claim of privilege relates to Exhibit G which has been submitted for in camera inspection. Accompanying the claim of privilege and Exhibit G is an affidavit by Attorney General Griffin B. Bell. According to this affidavit, the claim of privilege relates to foreign intelligence activities which pertain to, but are not directed at, the activities of the Women's Strike for Peace, one of the plaintiffs in this action. The affidavit also states that release of the documents at issue from the files pertaining to the Women's Strike for Peace would jeopardize the national security and interfere with the conduct of our foreign relations. The claim of privilege must therefore involve the absolute privilege against disclosure of state secrets.

The affidavit of the Attorney General states that the claim of privilege was made after reviewing the documents pertaining to the Women's Strike for Peace in conjunction with a classified affidavit of Mr. William O. Cregar, Assistant Director, Intelligence Division, Federal Bureau of Investigation, and a classified affidavit from an Assistant Secretary of State. These latter two affidavits and the documents pertaining to the Women's Strike for Peace constitute Exhibit G.

P-034-C

FPI-MAR—10-6-77

Claims of state secret privilege must be tested against the standards set forth by the Supreme Court's decision in United States v. Reynolds, 345 U.S. 1 (1953). Reynolds first requires that "[t]here must be a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by the officer." United States v. Reynolds, supra, at 7-8. Reynolds also requires that the documents submitted in support of a state secret privilege must set forth the nature of the threat to national security and the type of interference with foreign relations with sufficient particularity to permit the Court to make an informed judgment on whether a claim of state secret privilege should be upheld. Id. at 345. See also Kinoy v. Mitchell, 67 F.R.D. 1, 8-14 (S.D.N.Y. 1975).

Under the procedures established in United States v. Nixon, 418 U.S. 683, 714-16 (1973) and in light of the substantive standards set forth in United States v. Reynolds, supra, we have conducted an in camera inspection of the documents which constitute Exhibit G. We conclude that the documents contained in Exhibit G in conjunction with the affidavit of Attorney General Griffin Bell state with sufficient particularity the nature of the threat to national security and the type of interference with foreign relations which would be entailed by the release of the documents pertaining to the Women's Strike for Peace. We further find that disclosure of these documents could reasonably be expected to cause serious damage to the national security and could adversely affect the conduct of foreign relations between the United States and other governments. Consequently, these documents are absolutely protected from disclosure. United States v. Reynolds, supra, at 11.

P-034-C

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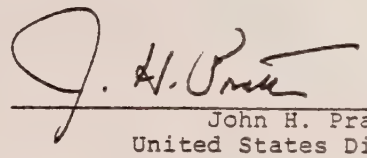
In accordance with the foregoing reasoning, it is this 8th day of December, 1978

ORDERED, that the claim of privilege asserted by William H. Webster and supported by an affidavit of Attorney General Griffin B. Bell, filed in this action on November 7, 1978, be and hereby is upheld.



John H. Pratt
United States District Judge

P-034-C

FPI-MAR—10-6-77

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	CIVIL ACTION NO. 76-1326 Filed: April 2, 1979

MOTION BY DEFENDANTS BURGESS, COURTNEY, GLASS, GRIMALDI, GULOTTA, JONES, KELLER, KREBS, LAMBERTH, MOORE, OLMERT, PALMER, PANGBURN, RUDIGER, SCHLARMAN, STANLEY, AND WAITE TO DISMISS

Defendants Forrest F. Burgess, William G. Courtney, C. Edwin Glass, Gerald T. Grimaldi, Peter A. Gulotta, Jr., Courtland J. Jones, Joseph E. Keller, Hilmer H. Krebs, Paul D. Lamberth, George C. Moore, Robert F. Olmert, John R. Palmer, Gerould W. Pangburn, Edward C. Rudiger, Wilfred R. Schlarman, John L. Stanley, and Edwin A. Waite, Jr., through their undersigned counsel and pursuant to Rules 8(a), 12(b) and 17(b) of the Federal Rules of Civil Procedure, move this Honorable Court to dismiss this action as against them on the following grounds:

(1) The Amended Complaint fails to set out a short and plain statement of a claim showing that plaintiffs are entitled to relief;

(2) The action is barred by the statute of limitations;

(3) Plaintiffs Emergency Committee on the Transportation Crisis and Washington Area Women Strike for Peace lack capacity to sue;

(4) Service of process upon defendants Jones and Schlarman was insufficient;

(5) Plaintiffs' allegations of government surveillance and use of informants fail to state a claim upon which relief may be granted.

In support of this motion the aforesaid defendants rely upon the attached memorandum of points and authorities and the attached affidavits of defendants Courtland J. Jones and Wilfred R. Schlarman.

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney

ALPHONSE M. ALFANO

David H. White
DAVID H. WHITE

Attorneys, Department of Justice
Washington, D. C. 20530
Telephone: (202) 633-4269

Attorneys for Defendants Burgess, Courtney, Glass, Grimaldi, Gulotta, Jones, Keller, Krebs, Lamberth, Moore, Olmert, Palmer, Pangburn, Rudiger, Schlarman, Stanley, and Waite

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON. et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al.,	)	
Defendants	)	

DECLARATION

I, Courtland J. Jones, hereby make the following declaration:

1. I am named as a defendant in the Amended Complaint filed in captioned matter on October 28, 1977.

2. On December 19, 1978, while I was out of town, my daughter found in the doorway of my residence a Summons addressed to me and a copy of the Amended Complaint in this matter. She brought this to my attention on my return to my residence later that same date.

3. The Summons and Amended Complaint were not delivered to me personally nor were they left at my residence with a person of suitable age and discretion residing therein.

I declare under penalty of perjury that the foregoing is true and correct.

Courtland J. Jones

Executed on March 14, 1979

Exhibit I
76-1326

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants	)	Civil Action No. 76-1326

DELCARATION

I, Wilfred R. Schlarman, hereby make the following declaration:

1. I am named as a defendant in the Amended Complaint filed in captioned matter on October 28, 1977.

2. On December 19, 1978, I found a Summons addressed to me and a copy of the Amended Complaint in this matter at my residence. The Summons and Amended Complaint were pushed through a mail slot in the front door of my residence.

3. The Summons and Amended Complaint were not delivered to me personally nor were they left at my residence with a person of suitable age and discretion residing therein.

I declare under penalty of perjury that the foregoing is true and correct.

Wilfred R. Schlarman
Wilfred R. Schlarman

Executed on March 12, 1979.

Exhibit II
76-1326

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
Plaintiffs,	)	
vs.	)	Civil Action No. 76-1328
JERRY V. WILSON, et al.,	)	
Defendants.	)	

FILED

NOV - 9 1979

JAMES F. DAVEY, Clerk

ORDER

Upon consideration of the motion of plaintiffs for an order disqualifying the Honorable John H. Pratt, the memorandum in support thereof, the entire record of this action, and it appearing to the court that plaintiff's affidavit is factually insufficient to allege that the presiding judge has "a personal bias or prejudice" against or in favor of any party to this proceeding within the meaning of 28 U.S.C. § 144, accordingly, it is this 9th day of November, 1979

ORDERED that the motion for an order to disqualify be and the same hereby is denied.

J. H. Pratt

John H. Pratt
United States District Judge

(N)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
Plaintiffs,	)	
vs.	)	Civil Action No. 76-1326
JERRY V. WILSON, et al.,	)	
Defendants.	)	

FILED

NOV - 9 1979

JAMES F. DAVEY, Clerk

ORDER

Upon consideration of the plaintiffs' motion for reconsideration of the order of August 31, 1978 upholding the federal defendants' claim of informant privilege and of the order of November 21, 1978, denying plaintiffs' motion for indexing, the opposition thereto of the federal defendants, and in accordance with the reasoning in the accompanying memorandum opinion, it is this 9th day of November, 1979,

ORDERED that plaintiffs' motion for reconsideration of orders upholding the federal defendants' claim of informant privilege and denying plaintiffs' motion for indexing be and the same hereby is denied.

J. H. Pratt

John H. Pratt
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
Plaintiffs,	)	
vs.	)	Civil Action No. 76-1326
JERRY V. WILSON, et al.,	)	
Defendants.	)	

FILED

NOV - 9 1978

JAMES F. DAVEY, Clerk

MEMORANDUM OPINION

Plaintiffs in this action have moved that the court reconsider in part two orders which relate to the federal defendants' claim of the informant privilege. The first order entered on August 31, 1978 generally upheld the claims of informant privilege advanced by the federal defendants. The second order of November 21, 1978 denied plaintiffs' motion for an index and itemized explanation of deletions in Federal Bureau of Investigation (FBI) documents. For reasons discussed below, we find no reason to reverse the decisions in these two orders and we deny plaintiffs' motion for reconsideration.

A. Challenge to August 31, 1978 order

This action was brought by a number of plaintiffs to challenge the legality of alleged police and FBI undercover operations descriptive of plaintiffs' lawful political activities. It has been plaintiffs' general contention that the full extent of these alleged activities cannot be demonstrated unless defendants identify FBI informants who surreptitiously, or under false pretenses, and with the complicity of FBI officials before or after the fact, committed acts of political

surveillance, infiltration or disruption unless defendants more completely describe the nature of these activities. The federal defendants addressed this contention by filing a representative sample of documents from FBI files which relate to these activities and also by submitting an affidavit by Attorney General Griffin B. Bell which asserted claims of informant privilege for the federal defendants in this action. Our decision of August 31, 1978 upheld these claims. Plaintiffs now raise four specific challenges to the legal basis for our decision and claim that (1) the Attorney General's affidavit is inadequate because it does not reflect his personal judgment that the interests in favor of non-disclosure outweigh the interests in disclosure; (2) the sample of documents which the federal defendants used to support the claim of informant privilege does not provide the substantive information needed to make this claim of informant privilege; (3) the Attorney General's affidavit and documents produced in this action indicate that the plaintiffs' need for disclosure outweighs the interests in non-disclosure; and (4) the federal defendants have made overly broad deletions of information in the exercise of their claim of informant privilege. We shall now briefly address each of these contentions.

1. <u>The Attorney General's Affidavit</u>

The plaintiffs assert that the Attorney General's affidavit does not reflect his personal determination that defendants' "need for withholding particular information outweighs the public interest favoring disclosure" but instead reflects the erroneous claim that the privilege flatly applies to informants assisting law enforcement endeavors. The detailed affidavit submitted by the Attorney General in conjunction with his review of selected documents, however, clearly indicates that the Attorney General devoted sufficient personal attention to support all

claims of informant privilege. The Attorney General's affidavit and his document review implicitly reflect a careful balancing of plaintiffs' need for information and the public interest in disclosure with the governments' need for withholding this information. Several courts have engaged in this sort of balancing before finding that the scales tip in favor of an informant's privilege. See, e.g., McCray v. Illinois, 386 U.S. 300 (1967); Rugendorf v. United States, 376 U.S. 528 (1964); Black v. Sheraton Corp. of America, 564 F.2d 550 (D.C.Cir. 1977); In re Gurnsey's Petition, 223 F. Supp. 359 (D.D.C. 1963). The Attorney General, in reaching this same conclusion in the specific context of this litigation, reaffirmed that the balance should be struck in favor of a claim of privilege.

2. Adequacy of Representative Sample

The Attorney General's claim of informant privilege was based upon his review of a sample of documents which illustrated "various sorts of circumstances in which information has been withheld in order to prevent disclosure of . . . confidential informants." Affidavit and Claim of Privilege of Griffin B. Bell, filed December 15, 1977, at 3. Plaintiffs contend that this sample is not a proper sample because it is not representative of the substantive material which plaintiffs need to prove their claims or of the information withheld from plaintiffs. However, as federal defendants reply, the sample was not designed to align the claims of informant privilege with substantive legal claims of plaintiffs. Clearly, the general need for information to support plaintiffs' substantive legal claims was a factor to be considered in striking the balance between the interests for disclosure and the interests for non-disclosure of the identities of the informants. But it would have been an unduly burdensome and unmanageable task to strike this balance in the context of each informant and each plaintiff's legal claims. The savings in judicial and administrative resources

resulting from the use of a representative sample in cases involving substantial numbers of informants would be lost if the federal defendants were compelled to undertake such a task. Moreover, it would be wholly unreasonable to expect the federal defendants to determine which allegations in plaintiffs' complaint are most important to plaintiffs' cause of action and which, if any, of the federal defendants' activities are most damaging to plaintiffs' rights of privacy and political liberty.

It is apparent that plaintiffs are in effect challenging representative sample technique as a whole. The information sought by plaintiffs simply could not be provided without abandoning the sample technique. In place of this technique, plaintiffs would require a case-by-case analysis of the legal claims of each plaintiff and the privilege claims asserted on behalf of each informant. The burdens of time and inconvenience which such a requirement would impose are staggering and we decline to so order. We find support for our position in a recently issued opinion of the United States Court of Appeals for the Second Circuit, Socialist Workers Party v. Attorney General, No. 78-6114, 78-6179, 78-3050, slip. op. (2d Cir. Mar. 19, 1979), which holds that the representative sample technique is an appropriate basis for evaluating claims of informant privilege. We further find that it was proper for federal defendants to select document samples classified according to the circumstances under which information was withheld rather than according to the need of each plaintiff for information pertaining to a particular informant. We are satisfied that the sample was a fair one and representative of the substantive nature of the information withheld.

3. Balancing of Plaintiff's Need for Information and the Interest in Non-disclosure of Sources

Plaintiffs generally challenge the withholding of a great number of requested documents and the deletion of portions from those documents

produced. According to plaintiffs, because the federal defendants have withheld documents or deleted portions of documents involving a personal contact by an informant or information which was available to a small identifiable group, plaintiffs have been deprived of all information pertinent to their First Amendment claims dealing with unlawful surveillance, infiltration and disruption. Plaintiffs then suggest that these First Amendment claims involve an interest of greater weight than the interest of the government in preserving the confidentiality of informant identities. To reach this conclusion, plaintiffs rely upon the district court's decision in Socialist Workers Party v. Attorney General of the United States, 458 F. Supp. 895 (S.D.N.Y. 1978). The court in Socialist Workers Party found that plaintiffs' allegations that they had been subjected to a systematic covert campaign to disrupt their operations outweighed the government's broad claim that the identity of informants should not be disclosed.

Assuming, arguendo, its correctness, the decision in Socialist Workers Party, however, cannot support plaintiffs' position in this action. That decision is inapposite in several key respects to the situation here. First, plaintiffs in this action have access to several thousand pages of informant reports which contain a great deal of information concerning the general types of FBI surveillance activities directed at plaintiffs. Second, plaintiffs here can undertake further discovery to determine the type, nature and effect of informant activity without compelling the disclosure of informant identities. Third, plaintiffs here have not demonstrated that there would be a cause of action for damages even if the federal defendants have engaged in the sort of political surveillance, infiltration or disruption which is alleged in the complaint. Alternatively, if plaintiffs' complaint does state a cause of action against the federal defendants, the plaintiffs have not adequately demonstrated that the allegations in the complaint cannot be proven with the information which has been and may be available to them

through discovery. Accordingly, plaintiffs have not persuaded us that their need for the disclosure of informant identities outweighs the government's interest in confidentiality.

4. Overbroad Deletion of Documents

Plaintiffs claim that the federal defendants have deleted from produced documents two general types of information which could not possibly lead to the identification of an informant: (1) notations on documents such as the symbols used by the FBI to record and transmit informant information, police officers' names, locations of documents, file numbers, and agencies to which information was dissenminated; and (2) documents withheld under a claim of privacy. In addition, plaintiffs claim that the federal defendants have employed classification techniques which arbitrarily withheld releasable documents and deleted document portions.

Plaintiffs have sought the production of several document notations and information about the record keeping practice concerning requested documents in an apparent attempt to determine whether any requested documents are missing from FBI files or have otherwise been withheld. We disagree with plaintiffs' claim that this information could not reasonably be expected to lead to the identification of informants' identities. The disclosure of FBI document symbols, the names of police officers and information identifying FBI document classification techniques could, when viewed in conjunction with previously released documents, be used to reconstruct the pattern of information provided by each informant and thereby threaten disclosure of the informant's identity. Moreover, plaintiffs have other discovery devices such as interrogatories which could be used to evaluate the completeness of the document search and document production. Until those devices have been fully utilized, it is inappropriate at this time to compel defendants to release information which could lead to disclosure of informant identities.

We, however, do agree with plaintiffs that information relating to persons not party to this action would not necessarily lead to the disclosure of informant identities. Nevertheless, the federal defendants could, and indeed may be required to refuse to disclose such information under the Privacy Act of 1974, 5 U.S.C. § 552a and the Freedom of Information Act, 5 U.S.C. § 552(b)(6). As defendants properly argue, such information is irrelevant to most, if not all, of the issues in this action and may pose needless embarrassment to third parties. Although we find it unnecessary at this time to specifically consider each deletion made to protect the privacy of a third party, we hold that it was generally proper for the federal defendants to delete information pertaining to third parties.

Plaintiffs' third argument, that the federal defendants have employed arbitrary classification procedures, is based upon the defendants' inconsistent treatment of identical documents. To illustrate this problem, the plantiffs have attached to their motion for reconsideration two copies of the same document. The first copy was taken from the files of the Women Strike for Peace and was totally deleted. The second copy was taken from the files of plaintiff Arthur Waskow and has been substantially disclosed.

In our judgment, the existence of dissimilar classification of the same document does not lead ineluctably to the conclusion that the federal defendants have engaged in a systematic practice of overly broad deletions of document portions. An agency charged with the responsibility of making available to different plaintiffs several thousand pages of documents may unavoidably treat identical documents in a different manner. The individual responsible for classifying documents will have different perception of the releasability on certain document portions. Even the most precise classification produced will not alleviate such subtle difference in human judgment. Plaintiffs have made no showing that these differences are sufficiently pervasive and damaging to their ability to

prove their causes of action to warrant an order which would in effect require defendants to again scrutinize several thousand pages of documents to determine whether all releasable material has in fact been produced. We therefore do not believe that the federal defendants have engaged in a pattern of overbroad deletions and we decline to order defendants to conduct such a scrutiny.

To sum up, plaintiffs have demanded complete disclosure of informants' identities. It is not seriously disputed that there exists at least a qualified privilege against such disclosure. In order to overcome the privilege, it is required that the moving party demonstrate sufficient need. One recognized example of such need is that of a party seeking to obtain exculpatory evidence in a civil or criminal case. Such is not the case here. The movants are plaintiffs in a civil litigation and have not shown a sufficient need for informants' identities to prove their case. They have not provided an adequate basis to overcome the strong public interes considerations which underlie the claim of informants' privilege.

B. Challenge to November 21, 1978 order

In our memorandum opinion of November 21, 1978, we denied defendants' motion for an indexed justification for all withheld documents or document portions. The requirement of such an index is firmly established in actions brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 as interpreted by this Circuit in Vaughn v. Rosen, 584 F.2d 820 (D.C.Cir. 1973). However, as stated in our memorandum and order of November 21, 1978, the index requirement is not generally applicable to requests for the production of documents under Rule 34 of the Federal Rules of Civil Procedure.

Plaintiffs have cited no authority which challenges this holding. Instead, plaintiffs argue that it is impermissibly inconsistent to rely

in our memorandum opinion of August 31, 1978 upon FOIA precedent to accept a representative sample of documents in support of claims of informant privilege but to reject FOIA precedent in the context of a Rule 34 request for production of documents.

Although we acknowledge plaintiffs legitimate concerns with potentially overbroad withholding of documents, we find that plaintiffs have not demonstrated sufficient need or good cause to require defendants to prepare the equivalent of a Vaughn v. Rosen index which would encompass several thousand pages of documents. There is no inconsistency in our reliance upon FOIA precedent to reach this conclusion. In the context of both the privilege claims and the index motion, our decisions were sensitive to the administrative burdens of processing a great volume of documents which would not have yielded substantially more pertinent information to plaintiffs. We accordingly relieved the federal defendants of the burden of examining all of the activities of each informant and the burden of classifying and justifying the withholding of each of several thousand document portions.

Our denial of plaintiffs' motion for indexing also reflected a concern that the flexible and extra-judicial operation of the Federal Rules of Civil Procedure should not be thwarted by the detailed and comprehensive procedures required under the FOIA. The FOIA imposes upon an agency a number of specific obligations including the obligation to respond to a request for documents within 10 days, 5 U.S.C. § 552 (a)(6)(A), the creation of avenues of the appeal of initial agency decisions, id., and the requirement that an agency determine the applicability of certain exemptions, 5 U.S.C. § 552(b). In addition, the agency is authorized to collect standard fees for costs incurred in the search for and copying of documents.

Plaintiffs cannot fairly employ a request for production of documents to impose the above FOIA obligation upon the federal defendants without payment of the fees required in the case of a FOIA request.

Moreover, the interest in judicial economy is best served if the requester can appeal a FOIA determination within an agency and then appeal a final agency decision to a federal court. In this procedure, in contrast to the procedure advocated by plaintiffs here, the court in its de novo review of a FOIA request has the assistance of two decisions on the requested documents. We accordingly find that we properly exercised our discretionary control over the conduct of discovery in denying plaintiffs' motion for an itemized justification of withheld documents and document portions.

An order consistent with the foregoing has been entered this day.

John H. Pratt
United States District Judge

November 9th, 1979

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

FILED
NOV 14 1980
JAMES F. DAVEY, CLERK

O R D E R

A status call was held in this case on November 13, 1980. Pursuant to that status call, it is, this 14th day of November, 1980, hereby

ORDERED: That defendant Stames' motion for judgment on the pleadings, filed January 29, 1980, and unopposed by plaintiffs, is hereby granted; and it is

FURTHER ORDERED: That defendant McDermott's motion for summary judgment, filed June 4, 1980, and unopposed by plaintiffs, is hereby granted.

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

8

U.S. Department of Justice

NOV 25 1980

Attachment

KMW:DHWhite:dmb
95-16-4110

Telephone:
633-4269

FILED

DEC 8 1980

JAMES F. DAVEY, CLERK

Honorable Louis F. Oberdorfer
United States District Judge
Constitution Avenue &
John Marshall Place, N.W.
Washington, D.C. 20001

Re: Julius Hobson, et al. v. Jerry Wilson, et al. (D.D.C.) Civil Action No. 76-1326

Dear Judge Oberdorfer:

In your Order of November 14, 1980, you directed that at the status conference to be held on November 21 "counsel should be prepared to propose a practical solution for the problem posed by the failure to effect service on a number of defendants." At that conference, I stated that the most practical solution would be dismissal of the claims against the defendants not served with process, and I agreed to move for dismissal as soon as possible.

Upon giving the matter further consideration, my associates and I have concluded that it would be inappropriate to move on behalf of persons whom we do not represent and who, because plaintiffs have not attempted to effect service of process, are not under the personal jurisdiction of the Court. Under the circumstances, however, we believe the Court has authority pursuant to its general powers to manage the litigation and pursuant to Local Rule 1-14 to dismiss the claims on its own motion.

The named defendants who have not been served with process are Clifford Arney, Lawrence Danhom, Jesse Farr, Fred Griffith, Norman Heironymi, Richard Kaiser, Garnett Tunstall, Leonard Webster, and James Whalen. A brief recitation of the history of this civil action demonstrates that plaintiffs have failed diligently to prosecute the action against these nine and, accordingly, dismissal is appropriate.

This civil action was commenced on July 16, 1976, and the original defendants included several present and former officials and officers of the Metropolitan Police Department, the Director of the Federal Bureau of Investigation, and ten present and former officials and agents of the Federal Bureau of Investigation. On December 8, 1976, defendants Stames and Kelley filed answers to

interrogatories which identified twenty-eight Special Agents of the FBI as having been assigned to conduct domestic intelligence investigations on the plaintiffs or as having had supervisory responsibility in the Federal Bureau of Investigation's Washington Field Office during 1964 to 1974 for domestic intelligence investigations. Only one of these twenty-eight, Charles Sawyer, was among the original defendants.

On October 5, 1977, plaintiffs moved to amend the complaint to add the twenty-seven agents, as well as FBI Headquarters official George Moore, as defendants. The motion was granted and the amended complaint was filed on December 7, 1977. During the early part of January 1978, plaintiffs' specially appointed process server attempted to serve the newly added FBI defendants by delivering the summonses to the FBI's Washington Field Office. Inasmuch as the person to whom the papers were given had not been authorized by any of the new defendants to accept service of process, proper service was not accomplished and the papers were shortly thereafter retrieved by plaintiffs.

Five months later, on May 22, 1978, plaintiffs served on the original federal defendants a set of interrogatories seeking the addresses of the new defendants. Objections were filed on June 26, 1978. Plaintiffs filed their motion to compel on October 25, 1978. Federal defendants filed their opposition on November 3, 1978, and the Court denied the motion by Order dated November 14, 1978. The Court strongly implied, however, that the interrogatory would be permitted upon a showing by plaintiffs that they had made reasonable effort to locate the defendants.

Within two months after the Court's ruling, plaintiffs served process on seventeen of the new defendants. The motion to dismiss the seventeen defendants was filed on April 2, 1979. The Court denied the motion by Memorandum and Order dated November 9, 1979, except two defendants, Courtland Jones and Wilfred Schlarman, were dismissed for insufficiency of service of process. The nine named above were not served. Two of the new defendants, Charles Ferguson and Phillip Wilson, died several years before commencement of the action.

The foregoing chronology establishes plaintiffs' failure to prosecute the nine defendants who have not been served. Their identities have been known to plaintiffs for four years. The first amended complaint was filed three years ago. Two years have passed since the denial of plaintiffs' motion to compel. Defendants' motion to dismiss was ruled on one year ago. Plaintiffs have had ample time to effect service or, failing that,

to demonstrate a diligent effort justifying reconsideration of their motion to compel federal defendants to answer the interrogatory for the addresses. That plaintiffs cannot now demonstrate that they have made such a diligent effort is evident from the passage of time in which nothing has been accomplished and is proven by their failure to effect proper service on two defendants, Messrs. Jones and Schlarman, whose addresses they have known for at least two years.

We believe, under these circumstances, that the Court has substantial basis to dismiss the claims sua sponte for plaintiffs' failure to prosecute. These nine defendants undoubtedly have other defenses available to them; however, since we do not believe we are entitled to represent them at this point and move in their behalf, this letter cannot be construed as either presentation or waiver of any defenses.

I hope these comments are helpful to the Court.

Very truly yours,

David H. White

DAVID H. WHITE
Attorney
Federal Programs Branch
Civil Division

cc: Daniel Schember, Esquire
William J. Earle, Esquire

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

PLAINTIFFS' RESPONSE TO ORDER OF
DECEMBER 5, 1980

The nine named, but unserved, defendants are not now parties to this case and no action by the court regarding them need be taken.

The United States Marshall reported difficulties serving these nine. Rather than attempt to serve all again at this time plaintiffs contemplate discovery from defendant Webster as to the positions these agents held, over what time periods, and which plaintiffs they subjected to surveillance. Based on this information, plaintiffs will determine those sufficiently involved in the acts alleged in the complaint and seek to serve them.

If any of those served were employed by the federal government at the time the original complaint was filed, Rule 15(c), Federal Rules of Civil Procedure will deem their addition to the suit timely, even at this stage of the litigation. Others may be able to claim prejudice due to delay, or lack of timely notice.

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, *et al.*,	)	
Defendants.	)	

PLAINTIFF'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS, TO DEFENDANT DISTRICT OF COLUMBIA

Under Rule 34, Federal Rules of Civil Procedure, you are requested to produce within thirty days the documents indicated below:

1. Please produce the following material referred to in the cover memorandum to the "Report on the Operations of the Intelligence Division," Exhibit A:
   a. All notes, other documents, or recordings prepared before, during, or after, and pertaining to, the interviews referred to in either the second or fifth paragraph of the cover memorandum;
   b. All written statements and supplemental statements referred to in either the third or the fourth paragraph of the cover memorandum;
   c. All written directives and guidelines; all notes, other documents or recordings pertaining to any verbal directive or guideline; the analysis; and all studies and recommendations referred to in the seventh paragraph of the cover memorandum.
2. Please produce the following material referred to in the numbered pages of Exhibit A:

a. The report published in 1966 mentioned near the bottom of page 2;

b. All notes, other documents or recordings pertaining to approval of the report or directions to implement its recommendations, mentioned in the middle of page 3;

3. Regarding the intercept utilized in connection with demonstration activities mentioned toward the bottom of page 14 of Exhibit A, please produce the follow material:

a. All annual reports pertaining to the intercept;

b. All material pertaining to the approval of the intercept, or the request for approval of the intercept;

c. All notes, other documents, or recordings prepared during or after the intercept and pertaining to it.

4. Please produce the guidelines for the intelligence division developed by defendant Zanders's committee, referred to in Exhibit D.

5. Please produce any documents amending or superseding the guidelines referred to in 4.

6. Please produce the transcript of all sessions of the D.C. Council Committee on Public Safety hearings on police intelligence operations, a few sessions of which are mentioned in Exhibit E.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' EIGHTH SET OF INTERROGATORIES,
TO DEFENDANT DISTRICT OF COLUMBIA

To the above-named defendant:

You are requested, under Rule 33, Federal Rules of Civil Procedure, to respond through an appropriate official, in writing, under oath, and within thirty days, to the following interrogatories:

1. Identify the persons listed either on page 7B or 7C of Exhibit B who were members of the Security Information Section of the Intelligence Division, and state the time period each was or has been a member.

2. Regarding the intercept utilized in connection with demonstration activities mentioned toward the bottom of page 14 of Exhibit A, please answer the following questions:

a. Who conceived the idea of the intercept?

b. When was the idea conceived?

c. Who requested approval for the intercept?

d. When was approval requested?

e. On what information was the request for approval based?

f. Who approved the intercept?

g. When was the intercept approved?

h. What was the reason for approval of the intercept?

i. Who installed the recording device?

j. When was the recording device installed?

k. What information regarding planned anti-war activities of an illegal nature was secured through use of the recording device?

l. What other information was secured through use of the recording device?

m. Did the recording device record telephone calls?

n. Did the recording device record voices in the apartment?

o. When was the recording device removed?

p. Was the recording device placed in the apartment of defendant Markovich (nee Kolego)?

q. Was the recording device provided by the Cental Intelligence Agency?

3. Identify the persons mentioned in your response to 1 who were or are undercover officers and state the time period each was or has been operating under cover.

4. Name the investigators (referred to on page 15 of Exhibit A) who recommended employment of any special employee to provide information concerning an activist group or demonstration planner.

5. Name the contact officers for each of the special employees referred to in 4.

6. Name the four persons referred to on page 18 of Exhibit A as having been "coordinators" with the Central Intelligence Agency and state the time period when each served in that capacity.

7. Referring to pages 18 and 19 of Exhibit A please name the following persons:

a. The twelve members of the department who were trained in intelligence activities by the CIA;

b. The three members who attended a school on photography;

c. The two members who received training in locks and locking devices;

d. The persons who worked most with each of the five CIA members who loaned to, and drove, their cars for the department during 1969-1970.

e. The persons who operated one or more of the portable radios obtained from the CIA;

f. The persons who operated the receiver obtained from the CIA;

g. The department members who assisted the CIA in training certain personnel for their organization.

8. What were the subjects of the training referred to in 7g?

9. Identify each of the persons named in your response to 1 who was issued a wallet-size card referred to in paragraph C.3. of Exhibit C.

10. State whether any of the following is the name of a former or current member or special employee of the Metropolitan Police Department:

a. Harold Bynum

b. Thomas Fulcher

c. William J. Foran

d. Jon (or John) Francis

11. For each affirmative response to 10, please state

a. by time period, each of the departmental units (e.g. division, branch, section, squad) to which

that person was or has been assigned since joining the department; and

b. that person's business and residential address, or, if not known, his last known business and residential address.

12. Name the following persons referred to in Exhibit F:

a. Agent 34, defendant James Binsted's partner;

b. The persons to whom defendant James Binsted reported on the special telephone number;

c. The persons to whom defendant James Binsted reported through mailings to the post office box.

13. For each of these interrogatories, name each person who was contacted for information to answer that interrogatory and state whether the person provided information included in the answer.

14. Please state the business and residential addresses, or, if not known, the last known business and residential addresses, for each person identified or named in your response to 2, 4, 5, 6, 7, 12, or 13.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY V. WILSON, et al.,	)	
Defendants.	)	

PLAINTIFF SAMMIE ABBOTT's RESPONSE TO
INTERROGATORIES TO PLAINTIFFS
BY FEDERAL DEFENDANTS

PART II

Interrogatory 1.

Please describe each act which caused you injury, and with respect to each act state (a) the date and place it occurred; (b) the name of the defendant who committed the act; and (c) the name of the defendant who supervised or directed the commission of the act.

Response 1.

Based on information I have received, and inferences therefrom, I believe the acts which caused me injury and (a) their dates and places, (b) the federal defendants who committed the acts, and (c) the federal defendants who supervised or directed the commission of the acts, were as follows:

A. Conspiracy to interfere with, or deprive me of, my first, fourth, and fifth amendment rights, my constitutional and common law rights of privacy, and my common law property rights, under the FBI program known as COINTELPRO--New Left:

(a) May, 1968 through April, 1971; Washington, D.C.;

(b) all FBI agents and officials who conducted or supervised New Left investigations during this time period participated in the conspiracy; the federal defendants who participated in the portion of the conspiracy that caused me injury were defendants Rudiger, Keller, Stanley, Moore, Sawyer, Krebs, Olmert, Grimaldi, Kunkel and Brennan;

DEFENDANT'S EXHIBIT
NO.

(c) all federal defendants listed in (b) above, supervised or directed the conspiracy, either by supervising or directing FBI agents or officials, or by supervising or directing FBI informants.

B. Acquiring and keeping information concerning my private and first amendment activities for purposes of the COINTELPRO--New Left conspiracy:

(a) times between May, 1968, and April 1971, indicated in FBI files produced on discovery; Washington, D.C.;

(b) defendants Keller, Rudiger, Stanley, Sawyer, Krebs, and Olmert;

(c) defendants Brennan, Kunkel, Grimaldi.

C. For purposes of the COINTELPRO--New Left conspiracy, and a noncriminal domestic intelligence investigation, to an extent exceeding that necessary for valid investigative purposes, directing informants acting under false pretenses to acquire from me, my associates, or my or our materials, or premises, and receiving from those informants and keeping, information concerning my private and first amendment activities that could not have been so acquired had the informants' true identities and purposes been known to noninformant associates of mine:

(a) times between January 1, 1964 and July 16, 1976 indicated in FBI files produced on discovery; Washington, D.C.;

(b) defendants Keller, Rudiger, Stanley, Sawyer, Krebs, and Olmert;

(c) defendants Kelley, Brennan, Kunkel and Grimaldi.

D. For purposes of the COINTELPRO--New Left conspiracy, and for purposes of a noncriminal domestic intelligence investigation, directing informants acting under false pretenses to influence, disrupt or counteract my first amendment activities and those of the National Mobilization Committee to End the War in Vietnam, the New Mobilization Committee, and the Washington Mobilization Committee:

(a) January 1, 1964 through an unknown time after 1971; unknown place;

(b) unknown;

(c) defendants Grimaldi, Kunkel, and Brennan.

E. For purposes of the COINTELPRO--New Left conspiracy, wiretapping the offices of the New Mobilization Committee to End the War in Vietnam, and other anti-Vietnam War organizations in Washington, D.C.:

(a) November, 1969; Washington, D.C.;

(b) unknown;

(c) defendants Grimaldi, Kunkel, and Brennan.

F. For purposes of the COINTELPRO--New Left conspiracy, disrupting housing arrangements by the Washington Mobilization Committee for persons coming to Washington, D.C., to protest the 1969 inauguration of the president:

(a) unknown time prior to January 20, 1069; Washington, D.C.;

(b) unknown;

(c) defendants Grimaldi, Kunkel, and Brennan.

G. For purposes of the COINTELPRO--New Left conspiracy, interfering with and countermanding radio communications of National Mobilization Committee marshals coordinating 1969 presidential inauguration demonstrations:

(a) January 20, 1969; Washington, D.C.;

(b) unknown;

(c) defendants Grimaldi, Kunkel, and Brennan.

H. For purposes of the COINTELPRO--New Left conspiracy, preparing and disseminating forged letters or leaflets intended to counteract or disrupt the first amendment activities of the National Mobilization Committee to End the War in Vietnam, or the New Mobilization Committee:

(a) fall, 1969 and other unknown times during the period of the COINTELPRO--New Left conspiracy; Washington, D.C.;

(b) unknown;

(c) defendants Grimaldi, Kunkel, and Brennan.

I. For purposes of the COINTELPRO--New Left conspiracy, anonymously mailing copies of a New York Times criticizing the New Left:

(a) September, 1969; Washington, D.C.;

(b) unknown;

(c) defendants Moore, Brennan, Kunkel, and Grimaldi.

J. Other unknown acts in furtherance of the COINTELPRO--New Left conspiracy, or a non-criminal domestic intelligence investigation of private and first amendment activities:

(a) unknown times between January 1, 1964 and July 16, 1976; unknown places;

(b) unknown;

(c) defendants Grimaldi, Kunkel, and Brennan.

Interrogatory 2.

With respect to each act described above, describe the injury you suffered (a) to your person or to the person of someone whom you purport to represent in this civil action; (b) to your property or to the property of someone whom you purport to represent in this civil action; (c) to your constitutional or legal rights or to the rights of someone whom you purport to represent in this civil action.

Response 2.

On my best information and belief with respect to each act described above injuries I suffered (a) to my person; (b) to my property; (c) to my constitutional legal rights, were as follows:

A. (a) none;

(b) trespass and conversion;

(c) interference with my first, fourth, and fifth amendment rights, my constitutional and common law rights of privacy;

B. (a) none;

(b) trespass,

(c) interference with my first, fourth, and fifth amendment rights, my constitutional and common law rights of privacy;

C. (a) none;

(b) trespass;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional and common law rights of privacy;

D. (a) none;

(b) trespass;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional and common law rights of privacy;

E. (a) none;

(b) trespass;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional, statutory, and common law rights of privacy;

F. (a) none;

(b) trespass;

(c) interference with my first, fourth, and fifth amendment rights;

G. (a) none;

(b) none;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional, statutory, and common law rights of privacy;

H. (a) none;

(b) none;

(c) interference with my first, fourth, and fifth amendment rights;

I. (a) none;

(b) none;

(c) interference with my first amendment rights;

J. (a) unknown;

(b) unknown;

(c) interference with my first, fourth, or fifth amendment rights, or my constitutional and common law rights of privacy.

Interrogatory 3.

With respect to each act described above, please state the constitutional or legal provision (a) which required that the defendant not commit the act, (b) which was violated by the defendant, and (c) which guaranteed to you or created for you the right that was injured.

Response 3.

The constitutional or legal provisions (a) which required that the defendant not commit the act, (b) which was violated by the defendant, and (c) which guaranteed to me or created for me the right that was injured with respect to each act described above were:

A. the first, fourth, and fifth amendments to the Constitution, my constitutional and common law rights of privacy, and common law;

B. the first, fourth, and fifth amendments to the Constitution, the constitutional rights of privacy, and common law;

C. the first, fourth, and fifth amendments to the Constitution, the constitutional and common law rights of privacy, and common law;

D. the first, fourth, and fifth amendments, the constitutional and common law rights to privacy, and common law;

E. the first, fourth, and fifth amendments to the Constitution the constitutional and common law rights to privacy, 18 U.S.C. §2510-20, and common law;

F. the first, fourth and fifth amendments to the Constitution, and common law;

G. the first, fourth, and fifth amendments to the Constitution, 47 C.F.R. § 116, 121, and 125, and common law;

H. the first, fourth, and fifth amendments to the Constitution;

I. the first amendment of the constitution;

J. the first, fourth, and fifth amendments to the Constitution, the constitutional and common law rights to privacy, or common law.

Interrogatory 4.

If you incurred actual financial expenses or suffered a financial loss as a result of any act described above, please (a) state the amount, (b) describe how the expense or loss was incurred, (c) describe the manner in which you have calculated the amount, and (d) state the name of the individual or entity from whom you are entitled to recover this amount.

Response 4.

To my best information and belief actual financial expenses or financial losses suffered as a result of the acts described above were:

(a) an unknown amount believed not to exceed $1,000;

(b) incurred by the additional out-of-pocket expenses and donations that were made necessary by the impediment of my efforts to bring about a hasty conclusion to the Vietnam War and the prevention of my attracting more public support to my causes than I otherwise would have;

(c) the amount was taken into consideration in the calculations in response to Interrogatory 5;

(d) defendants Sawyer, Feuer, Grimaldi, Lamberth, Keller, Rudiger, Stanley, Pangburn, O'Connor, Yates, Kunkel, Brennan, and Kelley are jointly and severally liable for the damages incurred by the acts they committed in the response to Interrogatory 1.

Interrogatory 5.

If you did not incur actual financial loss, do you assert entitlement to the recovery of monetary damages? If so, (a) state the amount, (b) describe the manner in which you have calculated the amount, (c) state the legal or factual proposition that entitles you to recover monetary damages, and (d) state the name of the individual or entity from whom you are entitled to recover this amount.

Response 5.

I assert entitlement to the recovery of monetary damages as follows:

(a) approximately $71,000 compensatory damages and $140,000 punitive damages;

(b) $50,000 compensatory damages and $100,000 punitive damages for conspiracy to violate my constitutional, statutory and common law rights, $10,000 compensatory and $20,000 punitive damages for violation of my first amendment rights, $10,000 compensatory and $20,000 punitive damages for violation of my fourth amendment rights and trespass and conversion, and $1,000 minimum for interception of my oral communications;

(c-d) defendants Sawyer, Feuer, Grimaldi, Lamberth, Keller, Rudiger, Stanley, Pangburn, O'Connor, Yates, Kunkel, Brennan and Kelley are jointly and severally liable for the damages incurred by the acts they committed in the response to Interrogatory 1 under the provisions cited in response to Interrogatory 3.

Interrogatory 6.

Did any act described above injure your rights as guaranteed by the First Amendment to the United States Constitution? If so, describe each occasion you were impeded from, or penalized for, the exercise of speech or the press. Please include in your answer the date, place, and content of the spoken or written expression which was impeded or penalized and the actual or intended audience of your spoken or written expression.

Response 6.

Damage to my first amendment rights included damage to my rights of freedom of association, of assembly and of petitioning the government for redress of grievances. My speeches and written pieces and the dates and places where they were publicized for which I was penalized or impeded from reaching my intended audience are included in the files which the FBI produced on discovery. The intended audience was the government of the United States and the citizens of the United States and other countries concerned with the conflict in Vietnam and civil rights.

Interrogatory 7.

Did any act described above injure your rights as guaranteed by the Fourth Amendment to the United States Constitution? If so, please state who or what was seized or searched, and state the date and place at which the search or seizure occurred.

Response 7.

Yes. See response to Interrogatory 1 A-H,J.

Interrogatory 8.

With respect to each act described above, please state the date and manner in which you discovered (a) that the act had occurred, (b) that you had suffered an injury; (c) that the defendant named had committed the act, and (d) that the defendant named had supervised or directed the commission of the act.

Response 8.

(a)-(b) I do not recall when I learned each act occurred and caused me injury. I recall that I learned about FBI actions against anti-war activists in D.C. from newspaper articles. I do not recall the dates of the articles. I recall being described as a "prominent Red" in an article in The Star in April, 1970. I recall that some articles centered around disclosures made by the Rockefeller Commission. I also recall an article by Robert Wall in the New York Review of Books and in the Washington Post Sunday Potomac section which revealed that the FBI had a hand in the BUF proposal to New Mobe to change a "head tax" for demonstrators. I recall that I discovered gradually over time that Steve Wilcox was an informant which was confirmed by the documents I received from a FOIA request. I recall that Wilcox was confronted and disappeared around 1970 or 1972. I recall suspecting that there were infiltrators of meetings which I attended in the 60's and 70's. In the late 60's I was contacted by P. Wilson who identified himself as an FBI agent and told me that I was under surveillance prior to the period of this suit. I recall I was contacted by FBI agents by phone. I do not recall the dates of contact. I learned by my review of my files that agents came to the building where I worked.

(c) After I reviewed the FBI files provided me in this case.

(d) I do not recall when I learned the names of the FBI agents in charge of the Washington Field Office and the FBI officials who headed the FBI, or portions of FBI headquarters concerning political surveillance, but it was sometime prior to the filing of this suit.

PART III

Interrogatory 1.

Have you, or has someone in your behalf, made an inquiry to obtain the information relevant to the statements?

Response 1.

I incorporate by reference plaintiffs' response to federal defendants' request for admissions filed simultaneous with this response to interrogatories.

Interrogatory 2.

State the content of each inquiry, when it was made, to whom it was made, and the response.

Response 2.

I incorporate by reference plaintiffs' response to federal defendants' request for admissions filed simultaneous with this response to interrogatories.

District of Columbia ss:

I, Sammie Abbott, being dully sworn, depose and say that I have read the foregoing responses to the Interrogatories by Federal Defendants and that they are true and correct to the best of my knowledge and belief.

Sammie A. Abbott
Sammie Abbott.

Sworn to and subscribed before me this 24th day of April, 1981.

Ruth A. Cohen
Notary Public

My Commission Expires January 31, 1985

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY V. WILSON, et al.,	)	
Defendants.	)	

PLAINTIFF ABE BLOOM'S RESPONSE
TO INTERROGATORIES TO PLAINTIFFS
BY FEDERAL DEFENDANTS

PART II

Interrogatory 1.

Please describe each act which caused you injury and with respect to each act state (a) the date and place it occurred; (b) the name of the defendant who committed the act; and (c) the name of the defendant who supervised or directed the commission of the act.

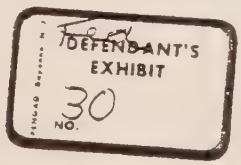
Response 1.

Based on information I have received, and inferences therefrom, I believe the acts which caused me injury and (a) their dates and places, (b) the federal defendants who committed the acts, and (c) the federal defendants who supervised or directed the commission of the acts, were as follows:

A. Conspiracy to interfere with, or deprive me of, my first, fourth, and fifth amendment rights, my constitutional and common law rights of privacy, and my common law property rights, under the FBI program known as COINTELPRO--New Left:

(a) May, 1968 through April, 1971; Washington, D.C.;

(b) all FBI agents and officials who conducted or supervised New Left investigations during this time period participated in the conspiracy; the federal defendants who participated in the portion of the conspiracy that caused me injury were defendants Krebs, Grimaldi, Lamberth, Keller, Rudiger, Stanley, Kunkel and Brennan;



(c) all federal defendants listed in (b) above, supervised or directed the conspiracy, either by supervising or directing FBI agents or officials, or by supervising or directing FBI informants.

B. Acquiring and keeping information concerning my private and first amendment activities for purposes of the COINTELPRO--New Left conspiracy:

(a) times between May, 1968, and April, 1971, indicated in FBI files produced on discovery; Washington, D.C., and other places stated in the FBI files produced on discovery;

(b) defendants Lamberth, Stanley, Grimaldi, Rudiger, Krebs, Keller.

(c) defendants Brennan, Kunkel, Grimaldi.

C. For purposes of the COINTELPRO--New Left conspiracy, but continuing after its termination, conspiracy to intercept, open, and photograph my mail, or that of the National Mobilization Committee to End the War in Vietnam, under a program known to the CIA as HTLINGUAL and to the FBI as Project Hunter:

(a) 1969 to February, 1973; unknown place;

(b) none;

(c) defendant Brennan.

D. For purposes of both the COINTELPRO--New Left conspiracy and the mail opening conspiracy, receiving and keeping photocopies of mail referred to above after it had been intercepted, opened, and photographed by the CIA:

(a) unknown times between 1969, and February, 1973; unknown place;

(b) none;

(c) defendant Brennan.

E. For purposes of the COINTELPRO--New Left conspiracy and a non-criminal domestic intelligence investigation, to an extent exceeding that necessary for valid investigative purposes, directing informants acting under false pretenses to acquire from me, my associates, or my or our materials or premises, and receiving from those informants, and keeping, information concerning my private and first amendment activities that could not have been so acquired had the informants' true identities and purposes been known to me or my noninformant associates:

(a) times between January 1, 1964 and July 16, 1976

indicated in FBI files produced on discovery; Washington, D.C., and other places stated in the FBI files produced on discovery;

(b) defendants Lamberth, Stanley, Sawyer, Feuer, Grimaldi, Rudiger, Krebs, Keller, Gulotta, Waite, and Rarity.

(c) defendants Kelley, Brennan, Kunkel and Grimaldi.

F. For purposes of the COINTELPRO--New Left conspiracy, and for purposes of a noncriminal domestic intelligence investigation, directing informants acting under false pretenses to influence, disrupt or counteract first amendment activities of the National Mobilization Committee to End the War in Vietnam, the New Mobilization Committee, the Washington Mobilization Committee, the National Peace Action Coalition, and the Washington Area Peace Action Coalition:

(a) May 1968 through an unknown time in 1971; unknown place;

(b) unknown;

(c) defendants Grimaldi, Kunkel, Brennan.

G. For purposes of the COINTELPRO--New Left conspiracy, wiretapping the offices of the New Mobilization Committee to End the War in Vietnam, and other anti-Vietnam War Organizations in Washington, D.C.:

(a) November, 1969; Washington, D.C.;

(b) unknown;

(c) defendants Grimaldi, Kunkel, Brennan.

H. For purposes of the COINTELPRO--New Left conspiracy, disrupting housing arrangements by the Washington Mobilization Committee for persons coming to Washington, D.C., to protest the 1969 inauguration of the president:

(a) unknown time prior to January 20, 1969; Washington, D. C.;

(b) unknown;

(c) defendants Grimaldi, Kunkel, and Brennan.

I. For purposes of the COINTELPRO--New Left conspiracy, interfering with and countermanding radio communications of National Mobilization Committee marshals coordinating 1969 presidential inauguration demonstrations:

(a) January 20, 1969; Washington, D.C.;

(b) unknown;

(c) defendants Grimaldi, Kunkel, Brennan.

J. For purposes of the COINTELPRO--New Left conspiracy, preparing and disseminating forged letters or leaflets intended to counteract or disrupt the first amendment activities of the National Mobilization Committee to End the War in Vietnam, or the New Mobilization Committee:

(a) fall, 1969 and other unknown times during the period of the COINTELPRO--New Left conspiracy; Washington, D.C.;

(b) unknown;

(c) defendants Grimaldi, Kunkel, Brennan.

K. For purposes of the COINTELPRO--New Left conspiracy, sending an anonymous letter to General Kinetics, Inc., to disrupt negotiations for a merger between that company and National Instrument Laboratories:

(a) late 1967 or early 1968; Washington, D.C. area;

(b) unknown;

(c) defendants Grimaldi, Kunkel, and Brennan.

L. Contacting my employer to indicate tbe FBI's interest in my private and first amendment activities and to obtain information concerning those activities and my work:

(a) February 25, 1971, other times stated in the FBI files produced on discovery; Washington, D.C. area;

(b) defendant Keller;

(c) defendants Grimaldi, Kunkel, and Brennan.

M. For purposes of the COINTELPRO--New Left conspiracy, receiving and keeping contents of a metal box known to be stolen by a MPD agent from 1029 Vermont:

(a) unknown time in 1970 or 1971; Washington, D.C.;

(b) defendant Grimaldi;

(c) defendants Kunkel and Brennan.

N. Other unknown acts in furtherance of the COINTELPRO--New Left conspiracy or a non-criminal domestic intelligence investigation of my private and first amendment activities:

(a) unknown times between January 1, 1964 and July 16, 1976; unknown places;

(b) unknown;

(c) defendants Grimaldi, Kunkel, and Brennan.

Interrogatory 2.

With respect to each act described above, describe the injury you suffered (a) to your person or to the person of someone whom you purport to represent in this civil action; (b) to your property or to the property of someone whom you purport to represent in this civil action; (c) to your constitutional or legal rights or to the rights of someone whom you purport to represent in this civil action.

Response 2.

On my best information and belief with respect to each act described above, injuries I suffered (a) to my person; (b) to my property; (c) to my constitutional legal rights, were as follows:

A. (a) none;

(b) trespass and conversion;

(c) interference with my first, fourth, and fifth amendment rights, my constitutional and common law rights of privacy.

B. (a) none;

(b) trespass;

(c) interference with my first, fourth, and fifth amendment rights, my constitutional and common law rights of privacy.

C. (a) none;

(b) trespass;

(c) interference with my first, fourth and fifth amendment rights, my constitutional and common law rights of privacy.

D. (a) none;

(b) trespass;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional and common law rights of privacy.

E. (a) none;

(b) trespass;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional and common law rights of privacy.

F. (a) none;

(b) trespass;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional and common law rights of privacy.

G. (a) none;

(b) trespass;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional, statutory, and common law rights of privacy.

H. (a) none;

(b) trespass;

(c) interference with my first, fourth, and fifth amendment rights.

I. (a) none;

(b) none;

(c) interference with my first, fourth and fifth amendment rights, and my constitutional, statutory, and common law rights of privacy.

J. (a) none;

(b) none;

(c) interference with my first, fourth, and fifth amendment rights.

K. (a) none;

(b) none;

(c) interference with my first, fourth, and fifth amendment rights.

L. (a) none;

(b) none;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional and common law rights of privacy.

M. (a) none;

(b) conversion;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional and common law rights of privacy.

N. (a) unknown;

(b) unknown;

(c) interference with my first, fourth, and fifth amendment rights, or my constitutional and common law rights of privacy.

Interrogatory 3.

With respect to each act described above, please state the constitutional or legal provision (a) which required that the defendant not commit the act, (b) which was violated by the defendant, and (c) which guaranteed to you or created for you the right that was injured.

Response 3.

The constitutional or legal provisions (a) which required that the defendant not commit the act, (b) which was violated by the defendant, and (c) which guaranteed to me or created for me the right that was injured with respect to each act described above were:

A. the first, fourth, and fifth amendments to the Constitution, my constitutional and common law rights of privacy, and common law;

B. the first, fourth, and fifth amendments to the Constitution, the constitutional rights of privacy, and common law;

C. the first, fourth, and fifth amendments to the Constitution, the constitutional and common law rights of privacy, 18 U.S.C. §1701, 2, & 3(b), 39 U.S.C. §3623(d) (earlier 39 U.S.C. §4057), and common law;

D. the first, fourth, and fifth amendments to the Constitution, the constitutional and common law rights of privacy, 18 U.S.C. §1701, 2, & 3(b), 39 U.S.C. §3623(d) (earlier 39 U.S.C. §4057), and common law;

E. the first, fourth, and fifth amendments to the Constitution, the constitutional and common law rights of privacy, and common law;

F. the first, fourth, and fifth amendments, the constitutional and common law rights to privacy, and common law;

G. the first, fourth, and fifth amendments to the Constitution, the constitutional and common law rights to privacy, 18 U.S.C. §2510-20, and common law;

H. the first, fourth, and fifth amendments to the Constitution, and common law;

I. the first, fourth, and fifth amendments to the Constitution, 47 C.F.R. s 116, 121, and 125, and common law;

J. the first, fourth, and fifth amendments to the Constitution;

K. the first, fourth, and fifth amendments to the Constitution;

L. the first, fourth, and fifth amendments to the Constitution;

M. the first, fourth, and fifth amendments to the Constitution, the constitutional and common law rights of privacy, and common law;

N. the first, fourth, and fifth amendments to the Constitution, the constitutional and common law rights to privacy, or common law.

Interrogatory 4.

If you incurred actual financial expenses or suffered a financial loss as a result of any act described above, please (a) state the amount, (b) describe how the expense or loss was incurred; (c) describe the manner in which you have calculated the amount, and (d) state the name of the individual or entity from whom you are entitled to recover this amount.

Response 4.

To my best knowledge and belief actual financial expenses or financial losses suffered as a result of the acts described above were:

(a) an unknown amount believed not to exceed $1,000;

(b) incurred by the additional out-of-pocket expenses and donations that were made necessary by the impediment of my efforts to bring about a hasty conclusion to the Vietnam War and the prevention of my attracting more public support to my causes than I otherwise would have;

(c) the amount was taken into consideration in the calculations in response to Interrogatory 5;

(d) defendants Krebs, Grimaldi, Lamberth, Keller, Rudiger, Stanley, Kunkel and Brennan are jointly and severally liable for the damages incurred by the acts they committed in the response to Interrogatory 1.

Interrogatory 5.

If you did not incur actual financial loss, do you assert entitlement to the recovery of monetary damages? If so, (a) state the amount, (b) describe the manner in which you have calculated the amount, (c) state the legal or factual proposition that entitles you to recover monetary damages, and (d) state the name of the individual or entity from whom you are entitled to recover this amount.

Response 5.

I assert entitlement to the recovery of monetary damages as follows:

(a) approximately $71,000 compensatory damages and $140,000 punitive damages.

(b) $50,000 compensatory damages and $100,000 punitive damages for conspiracy to violate my constitutional, statutory and common law rights, $10,000 compensatory and $20,000 punitive damages for violation of my first amendment rights, $10,000 compensatory and $20,000 puntive damages for violation of my fourth amendment rights and trespass and conversion, and $1,000 minimum for interception of my oral communications;

(c-d) defendants Krebs, Grimaldi, Lamberth, Keller, Rudiger, Stanley, Kunkel and Brennan are jointly and severally liable for the damages incurred by the acts they committed in the response to Interrogatory 1 under the provision cited in response to Inerrogatory 3.

Interrogatory 6.

Did any act described above injure your rights as guaranteed by the First Amendment to the United States Constitution? If so, describe each occasion you were impeded from, or penalized for, the exercise of speech or the press. Please include in your answer the date, place, and content of the spoken or written expression which was impeded or penalized and the actual or intended audience of your spoken or written expression.

Response 6.

Damage to my first amendment rights included damage to my rights of freedom of association, of assembly and of petitioning the government for redress of grievances. My speeches and written pieces and the dates and places where they were publicized for which I was penalized or impeded from reaching my intended

audience are included in the files which the FBI produced on discovery. The intended audience was the government of the United States and the citizens of the United States and other countries who were concerned with the conflict in Vietnam.

Interrogatory 7.

Did any act described above injure your rights as guaranteed by the Fourth Amendment to the United States Constitution? If so, please state who or what was seized or searched, and state the date and place at which the search or seizure occurred.

Response 7.

Yes, see response to Interrogatory 1 at A through N.

Interrogatory 8.

With respect to each act described above, please state the date and manner in which you discovered (a) that the act had occurred, (b) that you had suffered an injury, (c) that the defendant named had committed the act, and (d) that the defendant named had supervised or directed the commission of the act.

Response 8.

(a)-(b) I do not recall when I learned each act occurred and caused me injury. I recall I first considered bringing a lawsuit around the time that I read some articles by Seymour Hersh concerning CIA operations against D.C. organizations, but I never brought a suit against the CIA. In the latter part of 1974, I tried to test to see if my phones at my office were tapped but the results were inconclusive. The FBI files that I saw after the suit indicated to me that my home was broken into as part of a series of break-ins that I was aware of the Washington Peace

Center and the Washington Area Peace Action Coalition during the 1970's. Nothing happened in my home at the time to raise my suspicions. I recall during the period of 1969 to 1971 a break-in of the WAPAC offices at 1029 Vermont after a big demonstration. I have subsequently learned through discovery that that break-in was engineered by the MPD, but that the FBI received stolen goods from the break-in. I recall that during the early seventies I felt that my mail was being intercepted and read. The FBI files that I saw since filing this suit also indicated to me that my mail was being intercepted and read. In July of 1973 a friend of mine gave me a letter that she had received from me that had added to it other material from an unknown source. I do not recall any other reason for me to suspect earlier that my mail was being tampered with. In approximately 1967 and 1969 I was approached by two FBI agents who informed me that I was being surveiled and asked me if I wanted to become an informant. My belief that I was being surveiled was confirmed by my later review of the FBI files. I recall that there were always people at meetings that would urge unlawful conduct such that I was always suspicious that they were agents of some law enforcement agency. This belief was confirmed by various newspaper articles. I cannot remember the dates of the articles. I discovered that the dollar-a-head "tax" on demonstrators that was proposed by the Black United Front from an article by Robert Wall in the New York Review of Books. I do not remember when the article was published.

I recall that I learned from some articles that an anonymous letter that was sent to disrupt the merger of my company may have come from the FBI. I do not recall the date of the articles. I was also aware that Attorney General Saxby made a public statement regarding such activities in 1974.

(c) After I reviewed the FBI files provided me in this case.

(d) I do not recall when I learned the names of the FBI agents in charge of the Washington Field Office and the FBI officials who headed the FBI, or portions of FBI headquarters concerning political surveillance, but it was sometime prior to the filing of this suit.

PART III

Interrogatory 1.

Have you, or has someone in your behalf, made any inquiry to obtain the information relevant to the statements?

Response 1.

I incorporate by reference plaintiffs' response to federal defendants' request for admissions filed simultaneous with this response to interrogatories.

Interrogatory 2.

State the content of each inquiry, when it was made, to whom it was made, and the response.

Respone 2.

I incorporate my reference plaintiffs' response to federal defendants' request for admissions filed simultaneous with this response to interrogatories.

Abe Bloom

Abe Bloom

Sworn to and subscribed before me this 23rd day of April, 1981.

Lorisa L. Sinal

Notary Public

My Commission Expires [illegible] 25 1985

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY V. WILSON, et al., Defendants.	)	

PLAINTIFF ARTHUR I. WASKOW'S RESPONSE
TO INTERROGATORIES TO PLAINTIFFS
BY FEDERAL DEFENDANTS

PART II

Interrogatory 1.

Please describe each act which caused you injury, and with respect to each act state (a) the date and place it occurred; (b) the name of the defendant who committed the act; and (c) the name of the defendant who supervised or directed the commission of the act.

Response 1.

Based on information I have received, and inferences therefrom, I believe the acts which caused me injury and (a) their dates and places, (b) the federal defendants who committed the acts, and (c) the federal defendants who supervised or directed the commission of the acts, were as follows:

A. Conspiracy to interfere with, or deprive me of, my first fourth, and fifth amendment rights, my constitutional and common law rights of privacy, and my common law property rights, under the FBI program known as COINTELPRO--New Left:

(a) May, 1968 through April, 971; Washington, D.C.;

(b) all FBI agents and officials who conducted or supervised New Left investigations during this time period participated in the conspiracy; the federal defendants who participated in the portion of the conspiracy that caused me injury were defendants Sawyer, Feuer, Grimaldi, Lamberth, Keller, Rudiger, Stanley, Pangburn, O'Connor, Yates, Kunkel, Brennan and Krebs.

(c) all federal defendants listed in (b) above, supervised or directed the conspiracy, either by supervising or directing FBI agents or officials, or by supervising or directing FBI

DEFENDANT'S EXHIBIT NO.

informants.

B. Acquiring from the Internal Revenue Service, and keeping, my tax returns for purposes of the COINTELPRO--New Left conspiracy, without disclosing that purpose to the IRS, and by falsely representing that access to the returns was necessary for official Justice Department duties:

(a) spring or winter, 1968; Washington, D.C.;

(b) unknown;

(c) defendant Brennan.

C. Acquiring from the Internal Revenue Service, and keeping, the list of contributors to Students for a Democratic Society for purposes of the COINTELPRO--New Left conspiracy:

(a) unknown time in 1969; Washington, D.C.;

(b) unknown;

(c) defendant Brennan.

D. Acquiring and keeping information concerning my private and first amendment activities for purposes of the COINTELPRO--New Left conspiracy:

(a) times between May, 1968, and April, 1971, indicated in FBI files produced on discovery; Washington, D.C., Chicago, Illinois, and other places stated in the FBI files produced on discovery;

(b) defendants Lamberth, Stanley, Sawyer, Feuer, Grimaldi, Rudiger, Pangburn, Yates, Krebs, O'Connor;

(c) defendants Brennan, Kunkel, Grimaldi.

E. For purposes of the COINTELPRO--New Left conspiracy, but continuing after its termination, conspiracy to intercept, open, and photograph my mail, or that of the National Mobilization Committee to End the War in Vietnam, the Institute for Policy Studies, or the People's Coalition for Peace and Justice, under a program known to the CIA as HTLINGUAL and to the FBI as Project Hunter:

(a) 1969 to February, 1973; unknown place;

(b) none;

(c) defendant Brennan.

F. For purposes of both the COINTELPRO--New Left conspiracy and the mail opening conspiracy, receiving and keeping photocopies of mail referred to above after it had been intercepted, opened, and photographed by the CIA:

(a) unknown times between 1969, and February, 1973; unknown place;

(b) none;

(c) defendant Brennan.

G. For purposes of the COINTELPRO--New Left conspiracy, receiving and keeping photocopies of mail belonging to me or the Institute for Policy Studies known to be stolen by an informant who first was handled by MPD and later by the federal defendants:

(a) between July, 1971 and April, 1973; Washington, D.C.;

(b) defendant O'Connor;

(c) defendant Brennan, Grimaldi and Kunkel.

H. For purposes of the COINTELPRO--New Left conspiracy and a noncriminal domestic intelligence investigation, to an extent exceeding that necessary for valid investigative purposes, directing informants acting under false pretenses to acquire from me, my associates, or my or our materials or premises, and receiving from those informants, and keeping, information concerning my private and first amendment activities that could not have been so acquired had the informants' true identities and purposes been known to me or my noninformant associates:

(a) times between January 1, 1964 and July 16, 1976 indicated in FBI files produced on discovery; Washington, D.C., Chicago, Illinois, and other places stated in the FBI files produced on discovery;

(b) defendants Lamberth, Stanley, Sawyer, Feuer, Grimaldi, Rudiger, Krebs, Keller, O'Connor, Yates, Pangburn, Waite, and Rarity.

(c) defendants Kelley, Brennan, Kunkel and Grimaldi.

I. For purposes of the COINTELPRO--New Left conspiracy, and for purposes of a noncriminal domestic intelligence investigation, directing informants acting under false pretenses to influence, disrupt or counteract first amendment activities of Students for a Democratic Society, the National Mobilization Committee to End the War in Vietnam, the New Mobilization Committee, the Washington Mobilization Committee, and the Institute for Policy Studies Prison Reform Project, National Conference for New Politics:

(a) January 1, 1964 through an unknown time after 1971; unknown place;

(b) unknown;

(c) defendants Grimaldi, Kunkel, Brennan.

J. For purposes of the COINTELPRO--New Left conspiracy, wiretapping the offices of the New Mobilization Committee to End the War in Vietnam, other anti-Vietnam War organizations in Washington, D.C., the Institute for Policy Studies, and my home:

(a) November, 1969, and other unknown times; Washington, D.C.;

(b) unknown;

(c) defendants Grimaldi, Kunkel, Brennan.

K. For purposes of the COINTELPRO--New Left conspiracy, disrupting housing arrangements by the Washington Mobilization Committee for persons coming to Washington, D.C., to protest the 1969 inauguration of the president:

(a) unknown time prior to January 20, 1969; Washington, D.C.;

(b) unknown;

(c) defendants Grimaldi, Kunkel, and Brennan.

L. For purposes of the COINTELPRO--New Left conspiracy, interfering with and countermanding radio communications of National Mobilization Committee marshals coordinating 1969 presidential inauguration demonstrations:

(a) January 20, 1969; Washington, D.C.;

(b) unknown;

(c) defendants Grimaldi, Kunkel, Brennan.

M. For purposes of the COINTELPRO--New Left conspiracy, preparing and disseminating forged letters or leaflets intended to counteract or disrupt the first amendment activities of the National Mobilization Committee to End the War in Vietnam, or the New Mobilization Committee:

(a) fall, 1969 and other unknown times during the period of the COINTELPRO--New Left conspiracy; Washington, D.C.;

(b) unknown;

(c) defendants Grimaldi, Kunkel, Brennan.

N. To an extent exceeding that necessary for valid investigative purposes, and with intent to deter them from associating with me for political purposes, interviewing my neighbors and informing them of the FBI's interest in my activities:

(a) unknown times, 1964 to July 16, 1976; Washington, D.C.;

(b) unknown;

(c) defendants Grimaldi, Kunkel, and Brennan.

O. Other unknown acts in furtherance of the COINTELPRO--New Left conspiracy or a non-criminal domestic intelligence investigation of my private and first amendment activities:

(a) unknown times between January 1, 1964 and July 16, 1976; unknown places;

(b) unknown;

(c) defendants Grimaldi, Kunkel, and Brennan.

Interrogatory 2.

With respect to each act described above, describe the injury you suffered (a) to your person or to the person of someone whom you purport to represent in this civil action; (b) to your property or to the property of someone whom you purport to represent in this civil action; (c) to your constitutional or legal rights or to the rights of someone whom you purport to represent in this civil action.

Response 2.

On my best information and belief with respect to each act described above injuries I suffered (a) to my person; (b) to my property; (c) to my constitutional legal rights, were as follows:

A. (a) none;

(b) trespass and conversion;

(c) interference with my first, fourth, and fifth amendment rights, my constitutional and common law rights of privacy.

B. (a) none;

(b) none;

(c) interference with my fourth amendment rights, my constitutional, statutory, and common law rights of privacy;

C. (a) none;

(b) none;

(c) interference with my fourth amendment rights, my constitutional, statutory, and common law rights of privacy.

D. (a) none;

(b) trespass;

(c) interference with my first, fourth and fifth amendment rights, my constitutional and common law rights of privacy.

E. (a) none;

(b) trespass;

(c) interference with my first, fourth and fifth amendment

rights, my constitutional and common law rights of privacy.

F. (a) none;

(b) trespass;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional and common law rights of privacy.

G. (a) none;

(b) trespass and conversion;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional and common law rights of privacy.

H. (a) none;

(b) trespass;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional and common law rights of privacy.

I. (a) none;

(b) trespass;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional and common law rights of privacy.

J. (a) none;

(b) trespass;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional, statutory, and common law rights of privacy.

K. (a) none;

(b) trespass;

(c) interference with my first, fourth, and fifth amendment rights.

L. (a) none;

(b) none;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional, statutory, and common law rights of privacy;

M. (a) none;

(b) none;

(c) interference with my first, fourth, and fifth amendment rights.

N. (a) none;

(b) none;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional and common law rights of privacy.

O. (a) unknown;

(b) unknown;

(c) interference with my first, fourth, or fifth amendment rights, or my constitutional and common law rights of privacy.

Interrogatory 3.

With respect to each act described above, please state the constitutional or legal provision (a) which required that the defendant not commit the act, (b) which was violated by the defendant, and (c) which guaranteed to you or created for you the right that was injured.

Response 3.

The constitutional or legal provisions (a) which required that the defendant not commit the act, (b) which was violated by the defendant, and (c) which guaranteed to me or created for me the right that was injured with respect to each act described above were:

A. the first, fourth, and fifth amendments to the Constitution, my constitutional and common law rights of privacy, and common law;

B. the first, fourth and fifth amendments to the Constitution, the constitutional and common law rights of privacy, I.R.C.

§6103 and Reg. §301.6103(g) and (f), and common law;

C. the first, fourth, and fifth amendments to the Constitution, the constitutional and common law rights of privacy, I.R.C. §6103, Reg. §301.6103(g) and (f), and common law;

D. the first, fourth, and fifth amendments to the Constitution, the constitutional rights of privacy, and common law;

E. the first, fourth, and fifth amendments to the Constitution, the constitutional and common law rights of privacy, 18 U.S.C. §1701, 2, & 3(b), 39 U.S.C. §3623(d) (earlier 39 U.S.C. §4057), and common law;

F. the first, fourth, and fifth amendments to the Constitution, the constitutional and common law rights of privacy, 18 U.S.C. §1701, 2, & 3(b), 39 U.S.C. §3623(d) (earlier 39 U.S.C. §4057 and common law;

G. the first, fourth, and fifth amendments to the Constitution, the constitutional and common law rights of privacy, 18 U.S.C. §1701, 2, & 3(b), 39 U.S.C. §3625(d) (earlier 39 U.S.C. §4057), and common law;

H. the first, fourth, and fifth amendments to the Constitution, the constitutional and common law rights of privacy, and common law;

I. the first, fourth, and fifth amendments, the constitutional and common law rights to privacy, and common law;

J. the first, fourth, and fifth amendments to the Constitution, the constitutional and common law rights to privacy, 18 U.S.C. §2510-20, and common law;

K. the first, fourth and fifth amendments to the Constitution, and common law;

L. the first, fourth, and fifth amendments to the Constitution, 47 C.F.R. § 116, 121, and 125, and common law;

M. the first, fourth, and fifth amendments to the Constitution;

N. the first, fourth, and fifth amendments to the Constitution and the constitutional and common law rights to privacy;

O. the first, fourth, and fifth amendments to the Constitution the constitutional and common law rights to privacy, or common law.

Interrogatory 4.

If you incurred actual financial expenses or suffered a financial loss as a result of any act described above, please (a) state the amount, (b) describe how the expense or loss was incurred; (c) describe the manner in which you have calculated the amount, and (d) state the name of the individual or entity from whom you are entitled to recover this amount.

Response 4.

To my best information and belief actual financial expenses or financial losses suffered as a result of the acts described above were:

(a) an unknown amount believed not to exceed $1,000;

(b) incurred by the additional out-of-pocket expenses and donations that were made necessary by the impediment of my efforts to bring about a hasty conclusion to the Vietnam War and the prevention of my attracting more public support to my causes than I otherwise would have; loss of revenue for the Freedom Seder pamphlet

(c) the amount was taken into consideration in the calculations in response to Interrogatory 5;

(d) defendants Sawyer, Feuer, Grimaldi, Lamberth, Keller, Rudiger, Stanley, Pangburn, O'Connor, Yates, Kunkel, Brennan, and Kelley are jointly and severally liable for the damages incurred by the acts they committed in the response to Interrogatory 1.

Interrogatory 5.

If you did not incur actual financial loss, do you assert entitlement to the recovery of monetary damages? If so, (a) state the amount, (b) describe the manner in which you have calculated the amount, (c) state the legal or factual proposition that entitles you to recover monetary damages, and (d) state the name of the individual or entity from whom you are entitled to recover this amount.

Response 5.

I assert entitlement to the recovery of monetary damages as follows:

(a) approximately $71,000 compensatory damages and $140,000 punitive damages;

(b) $50,000 compensatory damages and $100,000 punitive damages for conspiracy to violate my constitutional, statutory and common law rights, $10,000 compensatory and $20,000 punitive damages for violation of my first amendment rights, $10,0[illegible] compensatory and $20,000 punitive damages for violation of my fourth amendment rights and trespass and conversion, and $1,000 minimum for interception of my oral communications;

(c-d) defendants Sawyer, Feuer, Grimaldi, Lamberth, Keller, Rudiger, Stanley, Pangburn, O'Connor, Yates, Kunkel, Brennan and Kelley are jointly and severally liable for the damages incurred by the acts they committed in the response to Interrogatory 1 under the provisions cited in response to the Interrogatory [illegible]

Interrogatory 6.

Did any act described above injure your rights as guaranteed by the First Amendment to the United States Constitution? If so, describe each occasion you were impeded from, or penalized for, the exercise of speech or the press. Please include in your answer the date, place, and content of the spoken or written expression which was impeded or penalized and the actual or intended audience of your spoken or written expression

Response 6.

Damage to my first amendment rights included damage to my rights of freedom of association, of assembly and petitioning the government for redress of grievances. My speeches and written pieces and the dates and places where they were publicized for which I was penalized or impeded from reaching my intended audience are included in the files which the FBI produced on discovery. The intended audience was the government of the United States and the citizens of the United States and other countries concerned with the conflict in Vietnam.

Interrogatory 7.

Did any act described above injure your rights as guaranteed by the Fourth Amendment to the United States Constitution? If so, please state who or what was seized or searched, and state the date and place at which the search or seizure occurred.

Response 7.

Yes. See response to Interrogatory 1 A-N.

Interrogatory 8.

With respect to each act described above, please state the date and manner in which you discovered (a) that the act had occurred, (b) that you had suffered an injury; (c) that the defendant named had committed the act, and (d) that the defendant named had supervised or directed the commission of the act.

Response 8.

(a)-(b) I do not recall when I learned each act occurred and caused me injury. I recall learning about the stealing of mail from the Institute for Policy Studies at the time newspaper articles appeared stating Robert Merritt had confessed to doing so. I do not remember when those articles appeared. At the time Robert Wall published articles concerning his FBI activities he spoke with me about acts taken against the Institute for Policy Studies. I do not recall when those articles were published or what specific acts Mr. Wall mentioned to me. I recall learning about FBI political surveillance from congressional materials and newspaper stories covering congressional committee investigations, but I do not recall the names of the congressional committees or when the newspaper stories were published. During a number of demonstrations between 1967 and 1974 local or federal agents told me I was under surveillance. Shortly after the National Conference for New Politics (NCNP) in 1967 I saw reports covering organized disruptions within the NCNP black caucus. The FBI files I saw after the suit was filed indicated to me there were FBI informants in the black caucus.

(c) After I reviewed the FBI files provided me in this case.

(d) I do not recall where I learned the names of the FBI agents in charge of the Washington Field Office and the FBI officials who headed the FBI, or portions of FBI headquarters concerning political surveillance, but it was sometime prior to the filing of this suit.

PART III

Interrogatory 1.

Have you, or has someone in your behalf, made any inquiry to obtain the information relevant to the statements?

Response 1.

I incorporate by reference plaintiffs' response to federal defendants' request for admissions filed simultaneous with this response to interrogatories.

Interrogatory 2.

State the content of each inquiry, when it was made, to whom it was made, and the response.

Response 2.

I incorporate by reference plaintiffs' response to federal defendants' request for admissions filed simultaneous with this response to interrogatories.

District of Columbia, ss:

I, Arthur Waskow, being duly sworn, depose and say that I have read the foregoing responses to the Interrogatories by Federal Defendants and that they are true and correct to the best of my knowledge and belief.

Arthur Waskow

Sworn to and subscribed before me this 22nd day of April, 1981.

Notary Public

My Commission Expires February 28, 1985

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY V. WILSON, et al., Defendants.	)	

PLAINTIFF REGINALD BOOKER'S RESPONSE
TO INTERROGATORIES TO PLAINTIFFS
BY FEDERAL DEFENDANTS

PART II

Interrogatory 1.

Please describer each act which caused you injury, and with respect to each act state (a) the date and place it occurred; (b) the name of the defendant who committed the act; and (c) the name of the defendant who supervised or directed the commission of the act.

Response 1.

Based on the information I have received, and inferences therefrom, I believe the acts which caused me injury and (a) their dates and places, (b) the federal defendants who committed the acts, and (c) the federal defendants who supervised or directed the commission of the acts, were as follows:

A. Conspiracy to interfere with, or deprive me of, my first, fourth, and fifth amendment rights, my constitutional and common law rights or privacy, and my common law property rights, under the FBI program known as COINTELPRO--Black Nationalist:

(a) August, 1967 through April, 1971; Washington, D.C.;

(b) all FBI agents and officials who conducted or supervised domestic intelligence investigations of black civil rights and anti-Veitnam War activists during this time period participated in the conspiracy; the federal defendants who participated in the portion of the conspiracy that caused me injury were defendants Krebs, Grimaldi, Olmert, Pangburn, Kunkel, Moore, and Brennan;

(c) all federal defendants listed in (b) above, supervised or directed the conspiracy, either by supervising or directing FBI agents or officials, or by supervising or directing FBI informants;

DEFENDANT'S EXHIBIT
NO.

B. Acquiring and keeping information concerning my private and first amendment activities for purposes of the COINTELPRO--Black Nationalist conspiracy:

(a) times between August, 1967 and April, 1971, indicated in FBI files produced on discovery; Washington, D.C., Toledo, Ohio;

(b) defendants Krebs, Olmert, Pangburn;

(c) defendants Moore, Brennan, Kunkel, and Grimaldi;

C. For purposes of the COINTELPRO-Black Nationalist conspiracy and a non-criminal domestic intelligence investigation, to an extent exceeding that necessary for valid investigative purposes, directing informants acting under false pretenses to acquire from me, my associates, or my or our materials or premises, and receiving from those informants, and keeping, information concerning my private and first amendment activities that could not have been so acquired had the informants' true identities and purposes been known to me or my noninformant associates:

(a) times between January 1, 1964 and July 16, 1976 indicated in FBI files produced on discovery; Washington, D.C., Toledo, Ohio, and other places stated in the FBI files produced on discovery;

(b) defendants Krebs, Olmert, and Pangburn;

(c) defendants Kelley, Brennan, Moore, Kunkel and Grimaldi;

D. For purposes of the COINTELPRO--Black Nationalits conspiracy, and for purposes of a noncriminal domestic intelligence investigation, directing informants acting under false pretenses to influence, disrupt or counteract first amendment activities of the Black United Front:

(a) January 1, 1964 through an unkown time after 1971; unknown place;

(b) unknown;

(c) defendants Olmert, Pangburn, Grimaldi, Kunkel, and Brennan;

E. For purposes of the COINTELPRO--Black Nationalist conspiracy, preparing and disseminating forged letters or leaflets intended to counteract or disrupt the first amendment activities of the Black United Front:

(a) fall, 1969 and other unkown times during the period of the COINTELPRO--Black Nationalist conspiracy; Washington, D.C.;

(b) unknown;

(c) defendants Olmert, Grimaldi, Kunkel, Moore, and Brennan;

F. Other unknown acts in furtherance of the COINTELPRO--Black Nationalist conspiracy or a noncriminal domestic intelligence investigation of my private and first amendment activities:

(a) unknown times between January 1, 1964 and July 16, 1976; unknown places;

(b) unknown;

(c) defendants Olmert, Pangburn, Grimaldi, Kunkel, Moore, and Brennan.

Interrogatory 2.

With respect to each act described above, describe the injury you suffered (a) to your person or to the person of someone whom you purport to represent in this civil action; (b) to your property or to the property of someone whom you purport to represent in this civil action; (c) to your constitutional or legal rights or to the rights of someone whom you purpost to represent in this civil action.

Response 2.

On my best information and belief with respect to each act described above injuries I suffered (a) to my person; (b) to my property; (c) to my constitutional legal rights, were as follows:

A. (a) none;

(b) trespass and conversion;

(c) interference with my first, fourth, and fifth amendment rights, my constitutional and common law rights of privacy.

B. (a) none;

(b) trespass;

(c) interference with my first, fourth and fifth amendment rights, my constitutional and common law rights of privacy.

C. (a) none;

(b) trespass;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional and common law rights of privacy.

D. (a) none;

(b) trespass;

(c) interference with my first, fourth, and fifth amendment rights, and my constitutional and common law rights of privacy.

E. (a) none;

(b) none;

(c) interference with my first, fourth, and fifth amendment rights.

F. (a) unknown;

(b) unknown;

(c) interference with my first, fourth, or fifth amendment rights, or my constitutional and common law rights of privacy.

Interrogatory 3.

With respect to each act described above, please state the constitutional or legal provision (a) which required that the defendant not commit the act, (b) which was violated by the defendant, and (c) which guaranteed to you or created for you the right that was injured.

Response 3.

The constitutional or legal provisions (a) which required that the defendant not commit the act, (b) which was violated by the defendant, and (c) which guaranteed to me or created for me the right that was injured with respect to each act described above were:

A. the first, fourth, and fifth amendments to the Constitution, my constitutional and common law rights of privacy, and common law;

B. the first, fourth, and fifth amendments to the Constitution, tne constitutional right of privacy, and common law;

C. the first, fourth, and fifth amendments to the Constitution, the constitutional and common law rights of privacy, and common law;

D. the first, fourth, and fifth amendments, the constitutional and common law rights to privacy, and common law;

E. the first, fourth, and fifth amendments to the Constitution;

F. the first, fourth, and fifth amendments to the Constitution, the constitutional and common law rights to privacy, or common law.

Interrogatory 4.

If you incurred actual financial expenses or suffered a financial loss as a result of any act described above, please (a) state the amount, (b) describe how the expense or loss was incurred; (c) describe the manner in which you have calculated the amount, and (c) state the name of the individual or entity from whom you are entitled to recover this amount.

Response 4.

To my best information and belief actual financial expenses or financial losses suffered as a result of the acts described above were:

(a) an unknown amount believed not to exceed $1000;

(b) incurred by the additional out-of-pocket expenses and donations that were made necessary by the impediment of my efforts to bring about a hasty conclusion to the Vietnam War and the prevention of my attracting more public support to my causes than I otherwise would have;

(c) the amount was taken into consideration in the calculations in response to Interrogatory 5;

(d) defendants Krebs, Grimaldi, Olmert, Pangburn, Kunkel, Moore, Brennan, and Kelley are jointly and severally liable for the damages incurred by the acts they committed in the response to Interrogatory 1.

Interrogatory 5.

If you did not incur actual financial loss, do you assert entitlement to the recovery of monetary damages? If so, (a) state the amount, (b) describe the manner in which you have calculated the amount, (c) state the legal or factual proposition that entitles you to recover monetary damages, and (d) state the name of the individual or entity from whom you are entitled to recover this amount.

Response 5.

I assert entitlement to the recovery of monetary damages as follows:

(a) $70,000 compensatory damages and $140,000 punitive damages;

(b) $50,000 compensatory damages and $100,000 punitive damages for conspiracy to violate my constitutional, statutory and common law rights, $10,000 compensatory and $20,000 puntive damages for violation of my first amendment rights, $10,000 compensatory and $20,000 punitive damages for violation of my fourth amendment rights and trespass and conversion;

(c) defendants Krebs, Grimaldi, Olmert, Pangburn, Kunkel, Moore, Brennan, and Kelley are jointly and severally liable for the damages incurred by the acts they committed in the response to Interrogatory 1 under the provisions cited in response to Interrogatory 3.

Interrogatory 6.

Did any act described above injure your rights as guaranteed by the First Amendment to the United States Constitution? If so, describe each occasion you were impeded from, or penalized for, the exercise of speech or the press. Please include in your answer the date, place, and content of the spoken or written expression which was impeded or penalized and the actual or intended audience of your spoken or written expression.

Response 6.

Damage to my first amendment rights included damage to my rights of freedom of association, of assembly and of petitioning the government for redress of grievances. My speeches and written pieces and the dates and places where they were publicized for which I was penalized or impeded from reaching my intended audience are included in the files which the FBI produced on discovery. The intended audience was the government of the United States and the citizens of the United States and other countries concerned with the conflict in Vietnam and civil rights.

Interrogatory 7.

Did any act described above injure your rights as guaranteed by the Fourth Amendment to the United States Constitution? If so, please state who or what was seized or searched, and state the date and place at which the search or seizure occurred.

Response 7.

Yes. See response to Interrogatory 1, A-F.

Interrogatory 8.

With respect to each act described above, please state the date and manner in which you discovered (a) that the act had occurred, (b) that you had suffered an injury; (c) that the defendant named had committed the act, and (d) that the defendant named had supervised or directed the commission of the act.

Response 8.

(a)-(b) Going back before 1965 I considered the FBI was violating my constitutional rights. It was generally known among those in the civil rights movement that the FBI was engaged in acts violating the Constitution. It was common knowledge. I read statements in the public news media that were made by Robert Wall. He indicated the Black United Front was a prime target for FBI acts violating the constitution. I do not recall when those statements appeared in the news media.

(c) I met defendant Pangburn in 1976 when he asked me if I was interested in working for the FBI. I did not learn the names of other defendants until after I reviewed my FBI file.

(d) After the lawsuit was filed, from discussions with my attorneys.

PART III

Interrogatory 1.

Have you, or has someone in your behalf, made any inquiry to obtain the information relevant to the statements:

Response 1.

I incorporate by reference plaintiffs' response to federal defendants' request for admissions filed simultaneous with this response to interrogatories.

Interrogatory 2.

State the content of each inquiry, when it was made, to whom it was made, and the response.

Response 2.

I incorporate by reference plaintiffs' response to federal defendants' request for admissions filed simultaneous with this response to interrogatories.

District of Columbia, ss:

I, Reginald Booker, being duly sworn, depose and say that I have read the foregoing responses to the Interrogatories by Federal Defendants and that they are true and correct to the best of my knowledge and belief.

Reginald Booker

Sworn to and subscribed before me this 27th day of April, 1981.

Notary Public

My Commission Expires February 28, 1985

8/20/81

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

MOTION BY DEFENDANT
COURTLAND J. JONES TO DISMISS

Defendant Courtland J. Jones, through his undersigned counsel, pursuant to Rules 8, 12, and 41 of the Federal Rules of Civil Procedure, moves this Honorable Court to dismiss this action against him on the following grounds:

1. The Amended Complaint fails to set out a short and plain statement of a claim showing that plaintiffs are entitled to relief;

2. The action is barred by the statute of limitations;

3. The plaintiffs' excessive delay in effecting service of process constitutes a failure to prosecute.

In support of this motion defendant Jones relies upon the attached memorandum of points and authorities.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

Brook Hedge
BROOK HEDGE

David H. White
DAVID H. WHITE

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Attorneys for Defendant
Courtland J. Jones

62-117199

Confessions of an FBI agent

Robert Wall knows first-hand what goes on inside the FBI's Washington field office, and Robert Wall is leaving the country

About seven years ago, Robert Wall joined the FBI because he wanted to "do something for good in the world, as naive as that sounds, and the FBI stood for all the good things." He resigned from the Bureau in 1970 after five years of service, and today at 33, he is planning to resign from the United States, at least temporarily, and move with his wife and three children to a small, isolated farm in Nova Scotia.

Both actions, rather drastic, are caused by varieties of disillusionment. And, by Wall's broadening quest for a life that makes sense to him.

The tale of his disillusionment with the FBI is traced in the following article by Wall (parts of which appeared in *The New York Review of Books*) and a second piece in next Sunday's *Potomac*.

It was not a single event or experience in the FBI that forced Wall's decision, but rather, as he said in a recent conversation, "the overall experience. I suppose more than anything, the repression of political thinking as contrasted with the Bill of Rights. In Soviet Russia, you know you have no rights and so it might not cause, but wouldn't expect anything there, but here, from history and the rhetoric all through our history, you do expect. [illegible] of the Bureau . . . especially the treatment of black minorities."

Exhibit A
DE-1326

When he resigned, his official reason for doing so was to attend law school. (That having a law degree was not a requirement for an FBI agent was one of the first differences between the Bureau's public image and its reality Wall encountered.) "I didn't burn any bridges when I resigned. I was more cautious then and I didn't want any bad references in my personal fitness reports. I had no thought of going back, but was concerned about getting past the ethics board of the law association, if I had a bad FBI record."

Wall returned to Buffalo, where he was born and raised, where his large family still lives today. It is a family with a strong Catholic tradition; two of Wall's older brothers are priests, and he was educated in seminaries through high school, college and a year of post graduate studies, nearly becoming a priest himself. "They think I'm a radical," he said recently, "but they try to be very Christian in their attitudes. There is no open animosity. Nobody argues in our family."

In the fall of 1970, he entered law school at New York State University in Buffalo, believing that the law offered him his second chance "to do something for good . . . something that benefited mankind." Last January, he resigned, again having realities betray his ideals. "The law, as it's constituted today," Wall says, "cannot answer the problems we have in society."

While attending law school, Wall became active in various causes—the Harrisburg Defense Committee, the Buffalo Defense Committee—and he "attempted to point out and stop arbitrary actions of the police department in Buffalo. You know, there'd be demonstrations, and demonstrators got beat up, and we'd file complaints." But the gap between his law classes and what was supposed to be, and what he found in the streets and what was, grew hopelessly wide in Wall's eyes. "I was turned off to law as an effective way to change things."

There was another reason he gave up on law school and decided to move to Nova Scotia.

"I came out of the Bureau looking for a different type of life. And I began to see that as a lawyer, I'd have the same life style, the same emphasis on competition for success, the same influences on my kids . . . I'm happier now. Before I was making $23,000, drove a fancy car. Now we live in a changing neighborhood with a broken-down Jeep wagon. But the change drew us close together, as people and a family. I have more time with the family."

He views Nova Scotia, in part, as an extension of his effort to create a "different kind of life."

"We'll be living in a relatively isolated situation and be able to deal with family and society on a different level . . . I decided on Nova Scotia for a few reasons. First, I wanted to get out of the country, so that we could get a perspective on the country you can't get any other way. Then, Nova Scotia is an economically depressed area, so land is cheap. And though we spent only two weeks there, we found it physically very beautiful. And we have some friends up there.

"A Cop-out? Yeah, everyone asks me that, and I have three things to say in reply. To begin with, my responsibility to my family comes first. In Nova Scotia, I think we'll grow even closer and I can build something for the future for them. Then, doing what I'm doing might serve as an example for others to follow. And, finally, there comes a point when you have to make an assessment of yourself and society, instead of charging ahead blindly . . . Who knows, maybe in a few years we'll be back.

"When you've come through what I've come through, you can't avoid a depression of a sort. But now, I'm not depressed. On the contrary, I look forward to a new and different life-style."

— ROBERT WOOL

Photographed by Mike Mitchell

Ex-FBI agent Robert Wall helps his oldest daughter, Joan (5) with a math problem at a free school near his home in Buffalo, N.Y.

Part I

By Robert Wall

In May of 1965, after serving as a naval officer for several years, I arrived in Washington, D.C., to begin my training for the position of Special Agent with the Federal Bureau of Investigation. I was both naive and apolitical. I thought of myself as an intense idealist and was convinced that the FBI was an organization in which personal integrity was highly valued. To me the organization was above all a protector of the innocent public and only secondarily the relentless pursuer of wrongdoers. In short, I was an ideal candidate for the job. I would not question; I would simply learn to do as I was told, content to believe that the FBI would never direct me wrong.

This belief managed to survive my first two years in the Bureau, during which I worked on criminal investigations and government job applications. It was when I was assigned to work in Internal Security in Washington, D.C., that I began to have my first serious doubts about the integrity of the organization, its motives, and its goals.

The Washington Field Office is the operating arm of the FBI in Washington, D.C. Like other field offices, we reported to the Bureau's Washington headquarters, but our office was one of the largest. Assigned to the office were between 500 and 600 agents, broken up into squads of from a handful to 50 or 60. Two squads worked only on applications for government jobs and five or six handled criminal investigations. In addition, there were nine squads assigned to do "security" work. One of those nine was charged with investigating all of the various individuals and organizations that allegedly threatened the national security or that advocated the overthrow of the United States government by force or violence.

It was to this squad that I was assigned in May, 1967, shortly before my second anniversary as an agent. I looked forward to the assignment because anything would have looked good to me after a few months spent investigating applicants for government jobs. But I realized that all my FBI experience until then had in no way prepared me for work in security. During the training course for new agents which I had undergone in 1965, instruction on "security" meant listening to stories of the Bureau's great accomplishments, e.g., the capture of the Nazi espionage teams that landed in Florida and New England during World War II, and, of course, the apprehension of Colonel Rudolph Abel. We learned also that the Bureau had been able to break up the Ku Klux Klan and the Communist Party.

But nothing in this training was meant to define how the FBI views national security or threats to it. We were told instead that only a handful of experienced and carefully picked agents, the "cream of the crop," were selected to work in this most difficult and challenging field. Furthermore, information about the security work of the FBI was supplied on a "need to know" basis only, and there was no immediate need to tell us much more.

Later, in September, 1967, I was sent to the FBI National Academy in Quantico, Va., for a two week in-service training in "Basic Security." But this consisted mainly of an elaborate rehash of the noninformation we had received during new agents' training. Nonetheless, I was eager to learn more about the work of the squad and the men assigned to it.

The Washington Field Office occupied the entire fourth and fifth floors and part of the sixth and eighth floors of the Old Post Office Building located between 10th and 11th Streets on Pennsylvania Avenue.

I found Squad S-7's space on the fourth floor on the 11th Street side of the building. Three rooms were designated for its use. The first was utilized by the squad supervisor, the second by the supervisor's secretary, a confidential file clerk and a few filing cabinets and the third by the dozen or so agents who made up the bulk of the squad. The third or squad room, as it was called, was jammed full of desks.

Groups opposed to the war in Vietnam, the draft, the House Un-American Activities Committee and other politically deviant groups fell to the squad for investigation as did a variety of civil rights organizations such as the Student Nonviolent Coordinating Committee (SNCC), Congress of Racial Equality (CORE), Southern Christian Leadership Conference (SCLC), and later the Black Panther Party.

After introducing me to a number of the squad members who were present at the time, my new supervisor directed me to acquaint myself with the work of the squad by reading through sections of the Manual of Instructions which pertained to Security Investigations. I found an empty desk and began to scan the seemingly endless pages of precisely ordered gibberish contained in the manual. This task was so boring and the result so meaningless that I was soon searching for any excuse to get out of the office.

In mid-morning of my second day on the squad, the supervisor came into the squad room with a teletype and laid it on the desk of an agent sitting nearby. He told the agent to get a few others who weren't busy and cover the demonstration mentioned in the teletype. A group gathered around to see what the assignment was and I joined them. Anxious for any diversion, I volunteered to assist. A number of others also signified their willingness to take part in the coverage. No one who expressed an interest was refused. It reminded me of the city room of a newspaper in an old movie where the editor comes rushing in yelling that there's a big fire in the old Glutz Warehouse and orders out a couple of reporters and a photographer to cover it.

No special preparations were required. The agents who had agreed to take part returned to their desks and cleaned up their paper work and a few minutes later gathered at the door of the squad room. There were five or six in all including one who was specially trained and equipped for photography.

I had no idea of what I was supposed to do. The teletype had said simply that two busloads of steelworkers from Bethlehem Steel's Sparrow's Point Plant (near Baltimore) were planning to picket at the Department of Labor, charging Bethlehem with racial discrimination in hiring and promotion and demanding that the Department of Labor step in to protect the rights of the workers discriminated against. I remember asking at the time, "Why are we covering this demonstration?" The answer, which I accepted unquestioningly at the time, was something to the effect that the FBI is charged with the responsibility of reporting on situations from which possible racial violence could arise. It was a glib response which was easily accepted. The riot in Watts was still a fresh memory. The Congress of Racial Equality (CORE) was sponsoring the demonstration. I knew of a case in the office titled "Cominfil Core" (shorthand for Communist Infiltration of CORE). And I reasoned that we wouldn't even have such a case unless there was a good reason to believe that the Communists were trying to take over the civil rights movement. So, logically, we could cover the demonstration to guard against any attempt to provoke racial violence.

I also asked what I was supposed to do. The answer here was simply that I should stand discreetly near the picketing, observe and record any signs being carried, try to identify the leaders or spokesmen of the group and determine, if possible the full extent of the group's plans. And so I spent the afternoon standing near the Department of Labor watching about 100 people march about in a circle, carrying signs, chanting and singing until a small delegation from the demonstrators met with some Labor Department officials inside the building. The remaining pickets gathered in the Departmental Auditorium located next door and were addressed by James Farmer who was then a former director of CORE. He spoke movingly of the struggle for civil rights in the South and how demonstrations such as the one which had just taken place were carrying on the spirit of that struggle in the North. Again I wondered why we were covering the demonstration when it seemed more consistent that we should have been there, if at all, to protect the marchers rather than surveil them.

I received my appointment to the FBI just one month after I was released from active duty in the Navy. In my final year of active duty I was stationed near Washington and looked there for a job for the time when I would be getting out. I had long considered joining the FBI and to facilitate this had begun going to Law School at night. I was then still under the impression that to be a Special Agent of the FBI required that you be either a lawyer or an accountant. Acting on instinct, one afternoon when I was in Washington I dropped in at the FBI headquarters building and went to the personnel office. I wanted to find out if there was any way in which I could work for the Bureau while I completed my studies at Law School. The secretary in the personnel office asked me a few questions about my current status with the Navy and then provided me with some applications for the job of Special Agent. Encouraged by this, I filled out the forms and a few weeks later stopped by once again, intending to drop them off and spend the rest of the day sightseeing in D.C. The same secretary then asked me if I had a few minutes to take a few tests and perhaps be interviewed briefly. My affirmative response began a day-long session of tests and interviews which terminated near 6 p.m. that evening. The tests seemed quite simple. One was a spelling test of 30 or so words and another was a matching test which required that the names of famous persons such as Stalin and Tito be joined with their true given names.

The interviewers repeatedly asked why I wanted to join the FBI, as though my response to this query would in some way tell whether or not I was qualified to get the job.

Less than a month after my release from active duty in the Navy, I received a telegram advising me that I was being offered an "excepted" appointment to the FBI to commence on 5/10/65 and if I accepted, I was to wire my reply immediately. I didn't know what an "excepted" appointment was but nonetheless I readily accepted and so on 5/10/65 found myself in the lobby of the Old Post Office Building looking for directions to the training division.

My strongest recollection of the three months that followed was that I spent most of my time fighting the impulse to fall asleep. However, the threat of surprise quizzes and the realization that a career hung in the balance aided in the fight. Almost seven of the 12 weeks were spent in one room on the sixth floor of the Old Post Office Building where from 9 am until 6 pm, with rigid 10-minute breaks on the hour and an hour for lunch, we were verbally assaulted by a variety of individuals, each of whom prefaced his remarks by reciting what seemed to be a formula: "What I'm going to tell you will be the most important thing that you'll hear in the course." Except for the three weeks we spent at Quantico, Va., learning how to point a gun in the right direction, the only break in the monotony was speculating about the places where we might be sent for our first office assignment.

On our last day in Washington, my wife along with the wives of four other agents who happened to be in D.C. at the time were given a guided tour of the FBI headquarters ending in a visit and short lecture by Asst. Director J. H. Casper. The lecture consisted of a streamlined course in how

to be a good FBI wife." It was a condensed version of the socialization which we as new agents had received over the period of 12 weeks. He told them how they were expected to dress, how to behave in public and that they should refrain from making any public statement, even to neighbors, about politics because what they said as wives of FBI agents would reflect on the Bureau and the careers of their husbands.

It was understood among agents that if your wife somehow embarrassed the Bureau, say, became active in some peace or civil rights organization the Bureau considered radical, you could expect to be put on the transfer circuit, which meant being transferred from one undesirable office to another, until you had enough and quit.

My wife resented Casper's lecture and attitude, rejecting as unreasonable most of what he said. In part, this led us to resolve to keep our personal lives separate from the Bureau and to avoid as much as possible socializing with other agents and their wives when I was off duty.

In my first assignment in Miami, Fla., where I handled routine criminal investigations such as interstate transportation of stolen motor vehicles, this resolve led us to take an apartment in the city in a section where recent arrivals from Cuba were making their homes, rather than in the suburbs where most of the other agents lived. What little socializing we did was mainly among the Cuban refugees. Wives of agents in Miami had a club, but my wife was not a part of it.

My assignment to the Washington Field Office's Squad S-7 (Internal Security) coincided with stepped up activity of the peace movement. The anti war movement was rapidly becoming a movement of national significance and the FBI was gearing up to investigate what was becoming, in its eyes, a threat to national security.

The heyday of this squad was during the late '40s and early 50s when those who were called Communists, pinkos, reds, Commie symps, fellow travelers, and sundry other names were being "discovered" and routed from all levels of American society. By the time I arrived on the scene the squad was jokingly referred to by some as "the graveyard," owing to the advanced age of some of the agents and the motionless manner in which they conducted their investigations now that their prime had passed. Of the dozen or so agents on the squad, all were near or past their 20th year of service in the Bureau. Most of them had spent the better part of their careers on the squad as "red chasers."

Each of the older agents would willingly relate how he had shared in the FBI's successful smashing of the Communist Party. The stories most often had the flavor of back fence gossip, for they concerned not some insidious plot to overthrow the government, but rather the clandestine love affairs of various Party members.

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By 1967, the Communist Party in Washington, D.C., had only three members remaining. The main function of the squad then was to verify the residence and employment of the persons who once had been subjects of FBI investigation and who were still considered dangerous enough to keep track of, even though they were no longer active with the Party or any other subversive group, for that matter. Every three, six, nine, or 12 months the files on these persons would be reopened and assigned to an agent on the squad who would make certain that the individual still lived at the same address and worked at the same job.

To accomplish this task, the agent could use several methods. He could personally observe the subject at his home and follow him to work. Or he could request the agents handling one of the three remaining informants familiar with former Party members to ask the informants about the man in question. The latter method was usually chosen since it would eliminate any real work for the agent. After the informant had reported, the case could then be closed again. In closing the case, the agent could either certify that the subject was still worthy of the Bureau's attention or try to give him a lower priority, thereby lengthening the interval before the file had to be reopened. It was simpler and required much less paperwork to certify that the subject still needed watching. Thus the investigations of hundreds of perfectly harmless people continued on through the years.

Also by 1967, the antiwar movement was growing from its lean beginnings to a movement of national significance. The response of the Bureau was consistent with its history. It determined that the movement was a part of the larger Communist conspiracy to overthrow the United States government. Having decided this, the Bureau set about to investigate the movement to show the existence of the conspiracy.

Proof sufficient to satisfy the Bureau was readily available. For example, it was noted that among the 35,000 to 40,000 persons who took part in the march on the Pentagon in October, 1967, approximately 20 persons who had once been named as members, suspected members, or sympathizers of the Communist Party were reported to be in the crowd. A few among them had actually assisted in organizing the march. Although the Bureau always insists that it neither draws conclusions nor makes recommendations from the facts it gathers, the FBI report on the march on the Pentagon was leaked to the press and its impact was obvious: the thousands who marched to protest the war in Southeast Asia were publicly labeled as mere pawns in a Communist master plan to spread dissent throughout the nation. They had been duped into giving aid and comfort to the enemy and demoralizing our fighting men.

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only the "Communist agitators" in the antiwar movement. Instead we were directed to investigate all the leaders in all the local peace groups and to determine among other things the source of any money used to finance the movement. From there it was a simple step to the investigation of anyone connected to the peace movement in any way. The number of investigations was limited only by the time available and the problem of distinguishing the organizers and leaders of mass rallies from the passive followers.

To deal with the peace movement the FBI followed its usual practice of planting informants. It was easy to recruit young people to infiltrate the antiwar organizations and other groups in the so-called "New Left" since large numbers of volunteers were needed to hand out leaflets, run mimeo machines, answer phones, stuff envelopes, and similar chores connected with political organizing. All one of our FBI informants needed to do was walk into the office and state briefly that he was opposed to the war and wished to volunteer his services. He would seldom be challenged to prove his allegiance to the movement. Then, with little additional effort, he had access to mailing lists, names of contributors, copies of leaflets and handbills, and was able to report in detail on any organizational meetings that might take place.

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The informants were always directed to look especially for any indication that violence was being planned by any group or individual within a group. This was the rationale by which the Bureau justified its infiltration of these political organizations, although during my three years working on radical groups I never found any evidence that would lead to a conviction for criminal violence.

But the Bureau also had an active counterintelligence program which was titled "Cointelpro—New Left." This program was designed to develop means to thwart and undermine the activities of any organization that fell into the category of "New Left." A frequent tactic was to leak stories to the press and television shortly before any mass march or rally. This was easy enough to do. Agents in our offices would write often fanciful press releases warning that violence was expected on the day of the rally, or that the organizers of the march were in contact with Hanoi, or that some known Communists were active in organizing the march. Our superiors in the Internal Security Division at FBI headquarters would then pass on the information to conservative newspapers, which published it immediately. The purpose of such stories was not only to influence the general public but to scare away those whose commitment was weak and thereby reduce the number of persons who might otherwise attend.

Another purpose of the program was to create dissent among the various groups involved in the New Left to prevent them from working together. In one case we addressed a letter to the leaders of the National Mobilization Committee (NMC) which said that the blacks of Washington, D.C., would not support the upcoming rally of the NMC unless a $20,000 "security bond" was paid to a black organization in Washington. At the same time we instructed some informants we had placed in the black organization to suggest the idea of a security bond informally to leaders of the organization. The letter we composed was approved by the Bureau's counterintelligence desk and was signed with the forged signature of a leader of the black group. Later, through informants in the NMC, we learned that the letter had caused a great deal of confusion and had a significant effect on the planning for the march.

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"In trying to suppress . . . a broad-based national political movement . . . the FBI acted as a national police force . . ."

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"The agent . . . liked to tell of the lively sexual activities he had seen . . ."

"If your wife embarrassed the Bureau : . . you could be put on the transfer circuit . . ."

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Special Agent for the FBI

Robert Wall

I

In May of 1965, after serving as a naval officer for several years, I arrived in Washington, D.C., to begin my training for the position of Special Agent with the Federal Bureau of Investigation. I was both naïve and apolitical. I thought of myself as an intense idealist and was convinced that the FBI was an organization in which personal integrity was highly valued. To me the organization was above all a protector of the innocent public and only secondarily the relentless pursuer of wrongdoers. In short, I was an ideal candidate for the job. I would not question; I would simply learn to do as I was told, content to believe that the FBI would never direct me wrong.

This belief managed to survive my first two years in the Bureau, during which I worked on criminal investigations and government job applications. It was when I was assigned to work in Internal Security in Washington, D.C., that I began to have my first serious doubts about the integrity of the organization, its motives, and its goals.

The Washington Field Office is the operating arm of the FBI in Washington, D.C. Like other field offices, we reported to the Bureau's Washington headquarters, but our office was one of the largest. Assigned to the office were between five and six hundred agents, broken up into squads of from a handful to fifty or sixty. Two squads worked only on applications for government jobs and five or six handled criminal investigations. In addition, there were nine squads assigned to do "security" work. One of those nine was charged with investigating all of the various individuals and organizations that allegedly threatened the national security or that advocated the overthrow of the United States government by force or violence.

It was to this squad that I was assigned in May, 1967, shortly before my second anniversary as an agent. I looked forward to the assignment because anything would have looked good to me after a few months spent investigating applicants for government jobs. But I realized that all my FBI experience until then had in no way prepared me for work in security. During the training course for new agents which I had undergone in 1965, instruction on "security" meant listening to stories of the bureau's great accomplishments, e.g., the capture of the Nazi espionage teams that landed in Florida and New England during World War II, and, of course, the apprehension of Colonel Rudolph Abel. We learned also that the bureau had been able to break up the Ku Klux Klan and the Communist Party.

But nothing in this training was meant to define how the FBI views national security or threats to it. We were told instead that only a handful of experienced and carefully picked agents, the "cream of the crop," were selected to work in this most difficult and challenging field. Furthermore, information about the security work of the FBI was supplied on a "need to know" basis only, and there was no immediate need to tell us much more.

Later, in September, 1967, I was sent to the FBI National Academy in Quantico, Virginia, for a two week

ENCLOSURE

"New York Review of Books"
January 27, 1972

Exhibit B
76-1326

in-service training in "Basic Security." But this consisted mainly of an elaborate rehash of the noninformation we had received during new agents training. Nonetheless, I was eager to learn more about the work of the squad and the men assigned to it.

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III

The FBI has always been divided about college campuses. It wants to know what is happening on the campus, yet it is afraid of being charged with interfering with academic freedom. When the antiwar students began challenging the legitimacy of the Reserve Officers Training Corps (ROTC), the propriety of secret military research projects in colleges and universities, and the legality and morality of the draft, they turned their campuses into centers of political activity.

The bureau's first response to this student activism had a cautious note. We were instructed to investigate to determine who was responsible for the demonstrations and uprisings on the campuses, on the theory that they were organized by outside agitators traveling around the country, but not to conduct investigations on campus. We were told to plant informants in violence-prone student groups but not to use students themselves as informants. Then as campus activity increased we got the green light to recruit students again but were warned to choose only those who were "mature" and reliable. Those students selected were to be admonished strongly that the bureau was not interested in "legitimate campus activity" (a term as definable as "New Left").

I was understandably somewhat anxious when in November, 1967, I was assigned the case titled "Students for a Democratic Society (SDS)." Here was the organization that the bureau had singled out among all the other young activist groups for special attention. I was told that I had to prepare a comprehensive report on all SDS activities in the Washington, D.C., area in less than a month. Every campus SDS chapter was to be identified, as were the names and backgrounds of all officers of the various groups, the number of members in each chapter, the activities of each group, including especially any activity where violence or destruction of property took place.

The agent previously assigned to the case assured me that a brief letter to the bureau would suffice since there was no significant SDS activity in Washington, D.C., a fact that he had dutifully reported three times in the preceding year. (This particular agent was at the time moving up the ladder of bureau success to a supervisory position and I felt certain that his astute handling of the SDS case was largely responsible.)

With very little effort I was able to learn that there were already four campus SDS chapters in the city and an SDS regional office had just been

set up. Realizing that it would be impossible in the time remaining to compile all the information demanded by the bureau, I chose to imitate my predecessor and reported that there was no significant SDS activity in the Washington, D. C., area. Shortly thereafter, when the squad was beefed up, I arranged to have the SDS case reassigned to one of the newcomers.

The bureau's ambivalence regarding campus unrest was apparent when the Washington Field Office received a request from then Assistant Director William Sullivan to analyze the activity on campuses, point out the causes, and recommend the appropriate FBI policy for dealing with student movements. Since our squad was closest to the problem, the job of preparing the position paper was turned over to us. Our squad supervisor elected to assign the task to an older agent who had recently been assigned to the squad. This agent had little experience with college matters but had as yet been assigned few cases and had more time available. He also had a reputation for being able to "write well," that is, to say what the bureau wanted to hear in the language to which it was accustomed.

When I learned of the choice I was disturbed. The agent chosen, if described by a friend, would have been called an extreme conservative. In the banter of the office I had hung the label "fascist pig" on him. He in turn called me the "Father Groppi" of the office, or "Grop" for short. I knew that he saw a conspiracy in every campus demonstration and felt that swifter pol action was the first and best answer to any problem of disruption by college students. So I knew hat tack he would take.

At this point I was still naïve enough to believe that the bureau was amenable to change and I saw this paper as an opportunity to "affect the bureau from within." So I went to my supervisor and asked for his permission to take over the assignment of preparing the paper for Sullivan. He refused because, in his words, "You're too young to place the SDS in proper historical perspective with the old guard Communist organizations." Undismayed, I "borrowed" the rough draft of my colleague's paper and proceeded to draft a reply and counterproposal. In essence I contended that university administrators needed to re-evaluate the role of the university in our society and take the initiative away from radical agitators by instituting needed changes before the demand for these changes became the rallying point for student discontent.

I concluded that if university administrators could recognize the issues behind the student uprisings, meet with student representatives, and be willing to compromise, they would generally be able to avert destructive confrontation. I recommended that the bureau keep its hands off the universities, even those that had already suffered disruption, because the FBI had no legal justification to intrude; any intrusion would, moreover, be taken by students as an indication of attempted repression by federal authorities.

When I dropped my paper on the supervisor's desk, he handled the situation with the skill of a diplomat. Rather than choose between the papers, he gave both to a third agent to prepare a compromise paper to be presented to Sullivan, setting out the principal points on both sides of the issue. He promised also that I would have the opportunity to make an oral presentation to Sullivan at a later date.

About two weeks later, I returned to the office unexpectedly in mid-morning to discover that a meeting with Sullivan had been arranged at 1 P.M. that day. Angry at what appeared to be an attempt to keep me out, I went to the Coordinating Security Supervisor (my supervisor's supervisor) who had originally received the request from Sullivan that set the whole paper-writing flurry in motion. In his smooth Dixie manner he assured me that no slight had been intended, I had not been invited to the meeting merely because of an administrative oversight. Certainly I'd be allowed to have my say.

It seemed obvious to me then that they did not want me to attend the meeting but they didn't want to be too obvious about it. So I spent some time preparing an oral argument while I awaited the one o'clock meeting. At 12:45, just as I was bringing my shoes to a new luster, my phone rang. The Coordinating Supervisor on the other end advised me that unfortunately Mr. Sullivan's office had only four chairs for visitors and since I had been the last to request a part in the presentation and would be the fifth person, there was no choice but to exclude me. He tried to calm me with lavish praise for my initiative and willingness to tackle difficult problems, but he managed only a hollow laugh when I suggested that I'd accept standing room.

I was certain that my exclusion was just another example of how people on the lower levels of a bureaucracy act as a buffer for those higher up the ladder. They decided what the man at the top wanted to hear and they gave him just that. They had heard and read Mr. Hoover's statements that the SDS was a subversive group that traveled about the country seeking to destroy the institutions of higher learning and they could not make a presentation that deviated from that line.

The final result was an order directing intensified investigations of student agitators and expanded "informant penetration" of campus SDS groups. Predictably, the informants reported the names of hundreds of students who had done no more than say they were interested in SDS or had dropped in at a meeting. Our Washington squad alone opened dozens of cases on freshmen college students who attended orientation sessions sponsored by SDS on Washington, D. C., campuses. Soon we had so many new cases that we had to request additional agents to handle this new "threat to national security."

IV

While we were investigating antiwar groups and student activists, the squad also handled what were called "Racial Matters." This category was an absurdly and frighteningly broad one. Investigations on almost anything done by or for black people could be opened simply by labeling it a Racial Matter. Here, for example, are some of the "cases" we investigated:

- A group of teen-agers from the ghetto areas of Washington, D. C., who marched to the city council chambers and demanded restoration of funds for summer jobs for ghetto youth.
- Two busloads of steelworkers who picketed the Department of Labor to protest discriminatory practices at the Bethlehem Steel Sparrow's Point (near Baltimore) plant.
- A group of high-school students who staged a protest in their school cafeteria complaining that the food was not fit for human consumption.
- Two members of the Student Nonviolent Coordinating Committee (SNCC) who opened a bookstore on 14th Street in northwest Washington.

The FBI quickly responded with an investigation titled "Drum and Spear Bookstore, Racial Matter."

When the poor people's march was organized to dramatize the plight of the poor in our nation and a camp was set up near the Washington Monument, this was a Racial Matter. More logically perhaps, investigations of the Ku Klux Klan, the American Nazi Party, and similar groups were also Racial Matters.

Clearly the bureau had no rational criterion for opening these investigations. The only consistent pattern that I found was that if an individual or group is black and does something to gain attention it is likely to be investigated.

Our guide to Racial Matters at the field office was the early edition of the Washington *Post*. A typical news item would read: "Police arrested six persons early this morning when a crowd gathered as detectives of the Metropolitan Police Department were attempting to arrest a suspected narcotics peddler at the corner of 14th and U Streets, N.W. Some rocks and bottles were allegedly thrown at police," etc. Inevitably, when such a story appeared, we would receive a call from the supervisor of the Racial Desk in bureau headquarters asking what we knew about the incident. It was his firm conviction that incidents of this type were a manifestation of the conspiracy by blacks to take over their community by driving out the police.

So that we would not be embarrassed when the supervisor called, it became standard practice for one of the early arrivers in the office to scan the paper for articles like the one above. He would clip the item, call the precinct to verify the names of the persons arrested, and then paraphrase the news item in a teletype message to bureau headquarters, advising them that we were following the incident and would report any further developments. A month or two later, the agent to whom the case was assigned would close it with a letter stating that the incident was apparently spontaneous and not part of a conspiracy, and giving an estimate of the damages, the names of those arrested, and the background of those who already had records in FBI files.

Often the supervisor on the Racial Desk at the bureau would request specific information about a case under investigation by the field office. The agent to whom the Drum and Spear Bookstore case was assigned received such a request. For months he had been investigating the bookstore, watching its operations, checking out its owners, looking into its bank records, trying to ascertain the source of its funds. He had found nothing connected with crime, conspiracy, or evil doings. Now he was instructed to go to the bookstore and purchase a copy of the "Little Red Book" containing the quotations of Chairman Mao Tse-tung. It was pointless to ask what purpose the purchase of this particular book would serve. It was obvious to us that the supervisor felt that the bookstore, by selling this book, was somehow implicated in the Oriental branch of the Communist conspiracy.

The agent dutifully made his way to the Drum and Spear where he learned that they had sold their last copy of the book. Rather than order a copy to be mailed to the supervisor, a cheeky solution which he admitted considering, he returned downtown, bought a copy at Brentano's, and duly

passed it on to the bureau supervisor, just as if it had come from the Drum and Spear. Thereafter, the written description of the Drum and Spear contained the note that radical literature including the "Little Red Book" of Mao Tse-tung was obtainable there.

As I worked on Racial Matters in Washington (a city whose black population comprises more than 70 percent of the total), the appalling racism of the FBI on every level became glaringly apparent to me. It seemed that every politically dissident black man was a candidate for investigation. Perhaps this racism was no worse than in other branches of government, but it was extremely discouraging to find it so firmly entrenched in an organization of supposedly educated, professional men charged with responsibility for investigating violations of the civil rights laws.

The documents stolen from the Media, Pennsylvania, office of the FBI demonstrate the endemic racism of the bureau. In one memo that J. Edgar Hoover directed to all offices of the FBI, he ordered that "all black student unions and similar organizations organized to project the demands of black students, which are not presently under investigation, are to be subjects of discreet preliminary inquiries, limited to established sources and carefully conducted to avoid criticism, to determine the size, aims, purposes, activities, leadership, key activists, and extremist interest or influence in these groups." The stated purpose for these investigations was that these groups are the "target for influence and control by violence prone Black Panther Party (BPP) and other extremists."

Only the fact that the organizations to be investigated were black could explain the horrendous abuse of logic that the bureau used to justify this invasion of campuses throughout the country. J. Edgar Hoover had publicly announced that the small and largely ineffectual Black Panther Party was the greatest single threat to the security of the country. Having itself created the threat, the bureau set out to neutralize it. Even if Hoover could have seriously documented his charges against the Panthers, which he never did, it was absurd to investigate hundreds of people whose only connection with the Black Panther Party was that the party was trying to influence them. Hoover might similarly have justified an FBI investigation of every member of a "working class" union because the Communist Party directed its propaganda and organizing effort at workers, or an investigation of every college student organization because the SDS sought to influence and control students.

Nor was this assault on the black student unions an isolated incident. I could cite many similar ones, for example the FBI's interest in the Smithsonian Institute when it opened an annex in the largely black Anacostia section of Washington, D.C. One of the annex's first events was a program for Black History Week centered on the life and contributions of Frederick Douglass. The FBI actually paid informants to attend the program and report the contents of the speeches given during it.

In the case of Stokely Carmichael the FBI was particularly determined and vicious. When he moved to Washington, D. C., in December, 1967, our squad kept him under surveillance twenty-four hours a day, following him about the city from lookouts and cars,

and on foot. The investigation became even more intense a few days after Martin Luther King was assassinated. When blacks in Washington, D. C., as well as in many other cities, outraged by the murder, rioted for a day and a half, in the Washington Field Office a fifty-man special squad was assembled to get Carmichael for inciting to riot. We were directed to gather evidence showing that Carmichael had plotted, planned, and directed the rioting, burning, and pillage that took place in Washington, D.C. Fifty agents spent their full time for over a month on this one case.

One man, who later admitted that he had "been mistaken and perhaps exaggerated a bit," claimed that Carmichael had a pistol which he fired into the air and then told the crowd to go home and get guns. A great many others stated firmly that Carmichael had urged the crowd not to dishonor Dr. King's memory by rioting and had politely asked shop owners to close their shops in his memory. Lacking any substantial evidence on which to base a charge, the bureau nevertheless submitted voluminous reports on the minute by minute activities of Carmichael that were heavily weighted to imply that he had actually incited the mobs. Had Carmichael not decided to leave this country and go to Africa, the FBI, I am confident, would eventually have found something with which to bring an indictment against him.

Quite by accident I learned that the Internal Revenue Service (IRS) was aiding in the hunt for something with which to pin a charge on so-called "Black Militants." In early 1969 I was checking the background of a former member of SNCC, a man I had been investigating for almost two years. On three occasions I tried to close the case because I could find no indication that the subject was doing anything that would warrant an FBI investigation. Each time permission was refused; his status as a former member of SNCC being sufficient justification for going on with the investigation. I learned that the IRS had requested his arrest record from the Identification Division of the FBI. When I went to the IRS I found it had secretly set up a special squad of men to investigate the tax records of a list of "known militants and activists," and that the FBI was supplying the names of the persons for the IRS to include in this list. After talking to several IRS officials I was sent to a locked sound-proofed room in the basement of the IRS headquarters in Washington where I found a file on my subject, among hundreds of others piled on a long table.

V

There are hardly any limits on the bureau's activities in compiling political information, particularly about the new left. A case in point is the Institute for Policy Studies, an organization set up by dissenting officials in Kennedy's administration to carry out independent studies in international and domestic questions. The Institute

caught my attention shortly after I began investigating the new left. Reports from FBI informants showed that many of the leaders and spokesmen of antiwar and civil rights organizations called at the Institute when they visited Washington.

I reasoned that if there were a conspiracy that linked all these groups the Institute was the logical place to look for it. I drafted a memo to that effect and requested that a case on the Institute be opened and assigned to me. My supervisor quickly agreed: he was then trying to increase the case load of the squad to justify a request for an increase in manpower.

Most of the information about the Institute's work is easily available and I was soon able to accumulate a vast dossier on it including biographical sketches of its founders, sources of its financial support, a general idea of its day to day operation, and a pile of scholarly studies published by it. After analyzing this data I concluded that the Institute was not the secret mastermind of any conspiracy to overthrow the government but simply what I described in my report as a "think-tank of the Left," where a wide variety of current and former government officials, lawyers, journalists, radicals, and others were holding seminars, doing research, writing reports, etc. I closed the investigation. To do otherwise, incidentally, would have meant a mound of paperwork that would have occupied me full time for months.

About a year later another agent newly assigned to the squad came to see me with the closed file of the Institute and asked whether I thought the case ought to be reopened. This agent, like so many others, had strong right-wing views and could not believe that the Institute was merely sponsoring seminars and doing the other work I had described. It seemed necessary to him to think that a grand new left conspiracy existed. In spite of my opposition, he had the case reopened and began a full-scale investigation of the Institute. He began monitoring the checking account of the Institute to determine where its money was going. He asked for telephone company records and compiled a list of the Institute's long distance telephone calls. He attempted to place informants in the Institute as student interns and gathered every available paper published by it. Individual investigations were then opened on the people who worked for or received money from the Institute.

When I left the bureau in April, 1970, the case on the Institute was still being investigated with gusto, and a huge collection of papers and reports on it had accumulated. So far as I have been able to determine, the FBI has found no evidence whatever of any illegal activity by the IPS, but the Institute continues to be investigated.

My experience has shown me that the FBI in its pursuit of blacks, the antiwar movement, and college activists was not an impartial, disinterested finder of fact but rather a relentless guardian of orthodoxy, a police force which sought to cause harm to movements that boldly questioned the policies of the government. It engaged in these activities not simply because of the political prejudices of the director and his staff, but, to a large extent, to justify its own existence. Each attack on any outspoken critic of American institutions was intended to show the FBI as the indispensable

protector of the public. To each slanderous name-calling or alarmist leak to the press, Hoover added a soft-spoken if tendentious appeal to Congress for more money and additional personnel. Enemies of the public were created to justify the bureau's role as defender of the "National Security" against domestic foes who sought, according to Hoover's propaganda, to subvert the country.

This is not to say that an effective federal investigative agency is not needed to deal with crimes or that the FBI itself has not done efficient and honest criminal work (although it has for years been reluctant to act vigorously against organized crime). But my years in the FBI convinced me that most of what the bureau does in matters of internal security consists of investigations and rumor mongering that are foolish, pointless, and time-wasting so far as protection of the public from violation of criminal laws is concerned; while the agency is all too effective in harassing legitimate political activity. At the same time, all of the investigations I have referred to here have resulted in adding more names and dossiers to the millions in the FBI's files. The FBI is thus creating a proliferating store of secret police files on innocent people, often based on bizarre allegations and dubious information, and sometimes on nothing at all.

What I saw and did as an agent for the FBI exposed for me the wisdom of the old question: Who will watch the watchers? I have no easy answer to it. □

I.R.S. Team Collects Data On Extremists for Tax Use

By ROBERT M. SMITH
Special to The New York Times

WASHINGTON, Jan. 12—The Internal Revenue Service acknowledged tonight that it has a special seven-man unit whose sole job is to collect information on extremist political organizations of the left and right and their leaders to uncover situations where there may have been tax evasion.

Leon Levine, a public information officer for the revenue service, said that he was not clear what criteria were used to place people in the "extremist" category. But, he said, "because of the way some of these people behave in their everyday affairs, it's reasonable to believe some of them may be violating the tax laws."

The acknowledgement came after a former agent of the Federal Bureau of Investigation said he had seen a soundproof room in which the special squad worked.

The former agent, Robert N. Wall, mentioned this while discussing some of the inner workings of the bureau.

He said bureau activities had included monitoring the telephone calls of the Israeli Embassy; investigating, and trying to place young informants in, a liberal research institute; soliciting information from banks and telephone companies without getting subpoenas, and attempting to foment strife within radical circles through such devices as anonymous letters.

Mr. Wall, a 33-year-old former naval officer who was an F.B.I. special agent for five years, made disclosures in an

Continued on Page 22, Column 4

The New York Times
Robert N. Wall

THE NEW YORK TIMES, THURSDAY, JANUARY 13, 1972

Exhibit C
76-1326

Continued From Page 1, Col. 7

article, which will appear in The New York Review of Books, and in an interview at his home in Buffalo.

He described himself as so disenchanted with the American life style that he plans to move to a farm in Novia Scotia. He left the Federal Bureau of Investigation in April, 1970. He says he had become disillusioned wtih the bureau.

Almost all of Mr. Wall's allegations about the bureau have been independently verified by reliable sources inside and outside the Government.

An F.B.I. spokesman was asked today whether the bureau tries to create dissension in radical circles whether it monitors the telephones of foreign embassies and whether it solicits information from banks and telephone companies without subpoenas.

The spokesman said the bureau would make "no comment whatsoever." A spokesman did confirm, however, that Mr. Wall had been a special agent.

A reliable source confirmed Mr. Wall's allegations about the bureau's attempts to sow dissension in extremist organizations. He said the tactic had also been pursued effectively in the case of the Ku Klux Klan and that the technique had been borrowed from F.B.I. operations against organized crime. There, he said, an anonymous letter could result in gang warfare or the murder of a gangster.

Dissent Was a Goal

Johnnie M. Walters, Comissioner of Internal Revenue said that he did not know much about the special I.R.S. unit's operations because the existence of the unit came to his attention only about a week ago, in connection with a discussion of a possible reorganization of the agency.

When the unit finds evidence that extremists have access to large sums of money, it passes on the information to the regular tax enforcement personnel at Internal Revenue. Among the items checked are whether the organization's leaders have filed tax returns and whether the organization itself is claiming a tax-exempt status that it does actually have.

According to Mr. Wall, one purpose of the F.B.I.'s counterintelligence program "was to create dissent among the various grups involved in th New Left to prevent them from working togethr.

"In one case we addrssed a letter to the leaders of the National Mobilization Committee which said that the blacks of Washington, D. C., would not support the upcoming rally of the N.M.C. [in 1969] unless a $20,000 'security bond' was paid to a black organization in Washintgon. At th same time we instructed some informants we had placed in the black organization to suggest the idea of a security bond informally to leaders of the organization.

"The letter we composed was approved by the bureau's counterintelligence desk and was signed with the forged signature of a leader of the black group.

"Later, through informants, we learned that the letter had caused a great deal of confusion and had a significant effect on the planning for the march."

Mr. Wall's article in the Jan. 27 issue of The New York Review of Books will also say that some of the agents in the Washington field office, where he worked, tried to confuse peace demonstrations by "handing out leaflets giving misleading information about the time and place when the marchers were supposed to meet."

'To Reduce Violence'

A source here acknowledged, "We do disrupt where possible. We do the same thing with the Ku Klux Klan. We do it only where there is a likelihood of violence, to reduce violence."

The source went on to say, however, that with the exception of a 1967 march led by the Rev. Dr. Martin Luther King Jr., "There never was a peace march on Washington that didn't have a potential for violence."

This source also reported that the Fderal Bureau of Investigation tried to deepen factional conflicts within the radical Students for a Democratic Society by writing anonymous letters designed "to play one faction off against another."

The source here said that these maneuvers were basically an extension to the "radical" area of tactics the bureau has long used to combat organized crime. "One of these hoodlums would get out of his territory. We'd send an anonymous letter to the man in charge of that territory telling him about it," the source said.

Potential Results

What would happen? "a number of things might happen," he said. "These criminals all agree invading someone else's territory is a terrible thing. Two chieftains might get to fighting with one another, or one chieftain would start to turn other chieftains against the guy." The source acknowledged that the letter written by the bureau could end in the murder of the "poacher" by the gang.

In Buffalo Mr. Wall is a supporter of liberal causes ranging from the free-form Cause school—to which he sends his daughter—to the defense of a

radical college student arrested with the help of a police undercover agent.

For the last year and a half he has been a law student at the State University of Buffalo but is now leaving school for Nova Scotia because he feels "law cannot handle society's problems."

Joined Agency in 1965

Mr. Wall, who is a tall, thin man, joined the F.B.I. in May, 1965, after graduating from St. Bonaventure University in Olean, N.Y., and serving as a lieutenant (jg.) in the Navy. After training, he worked in the bureau's Miami office. From March, 1966, to March, 1967, he says, he attended language school at the National Security Agency at Ft. Meade, Md., studying Hebrew.

Why Hebrew? "They told me the Israelis were trying to get American atomic secrets for their desalination project," he said. A reliable source here said that the American intelligence community did feel the Israelis wanted atomic information, but he said he did not know why.

Mr. Wall said he was being trained to listen in on the telephone calls of the Israeli Embassy. That was also confirmed by this source, who said the Federal Bureau of Investigation also monitored and taped the conversations of Arab Embassies.

Mr. Wall said in the interview that during the six-day Israeli-Arab war of 1967, the bureau was short-handed and he was pressed into service at a switchboard set up by the F.B.I. to monitor all the calls being made to and from the Israeli Embassy. He said he did not overhear any interesting interesting conversations. As a matter of fact, he said, he had difficulty understanding the conversations — "there are different accents, you know."

'Think Tank' Investigation

Mr. Wall's article in The New York Review of Books also says that while he was a member of a security unit in the Washington field office he investigated the institute for Policy Studies, a liberal "think tank" here headed by Marcus Raskin and Richard J. Barnet. Mr. Wall recalls that he himself opened that investigation:

"There are hardly any limits on the bureau's activities in compiling political information, particularly about the New Left...

"The Institute caught my attention shortly after I began investigating the New Left. Reports from F.B.I. informants showed that many of the leaders and spokesmen of the anti-war and civil rights organizations called at the Institute when they visited Washington.

"I reasoned that if there were a conspiracy that linked all these groups, the Institute was the logical place to look for it. I drafted a memo to that effect and requested that a case on the Institute be opened and assigned to me. My supervisor quickly agreed; he was then trying to increase the case load of the squad [called S-7] to justify a request for an increase in manpower."

Closed but Reopened

Mr. Wall reports that he closed the investigation after becoming convinced the Institute "was not the secret mastermind of any conspiracy," but that another agent later reopened the file.

"He began monitoring the checking account of the Institute to determine where its money was going," Mr. Wall says. "He asked for telephone company records and compiled a list of the Institute's long-distance telephone calls. He attempted to place informants in the Institute as student interns and gathered every available paper published by it."

"Individual investigations," Mr. Wall reports, "were then opened on the people who worked for or received money from the Institute."

Mr. Wall concludes, "So far as I have been able to determine, the F.B.I. has found no evidence whatever of any illegal activity by the I.P.S., but it continues to be investigated."

Mr. Barnet, co-director of the Institute of Policy Studies, said yesterday he had not been aware the F.B.I. was investigating it until he met Mr. Wall recently. "It only suggests," he said, "that any organizations that do critical analysis are fair game for surveillance. We will continue to operate as we have, and we will take whatever measures we can to protect ourselves from this."

Tells of Affidavits

Mr. Barnet also said the institute had affidavits from Mr. Wall saying that the bureau had seen bank records of the institute. The institute, said Mr. Barnet, is considering taking legal action against the Riggs Bank, the largest in Washington, for having made the records available without being served a subpoena.

John R. Cocker of the Riggs Bank said today, in response to a question, that "our practice has always been that we require a subpoena for any records from any Government agency whatsoever, including the Congress."

According to Mr. Wall, "an agent would go to Riggs and other banks and look at the statements and checks we were interested in the day the statements were supposed to go out to the customer. The bank would hold them back, then send them out the next day. The agent would Xerox them or take notes. We knew it wasn't supposed to be done."

Mr. Wall also said the Chesapeake & Potomac Telephone Company in Washington gave the bureau telephone records without a subpoena ("It was a working relationship").

Frederick W. Langeein, general counsel for the telephone company, said today it was "absolutely untrue" that the telephone company gave the F.B.I. records of calls without a subpoena. He said that making known the existence of a message was a violation of Federal law.

School Records

Mr. Wall said, "We also had no problem in getting school records and hospital records—nothing is sacred. You could even get Social Security records, but you had to justify that quite heavily.

"The only thing we didn't get was I.R.S. [Internal Revenue Service] records. It was too much hassle, and generally they wouldn't give them to us. It was nice to know you couldn't get *something*."

A reliable source confirmed that "the Bureau does get financial information from banks on subjects."

"The relationship," he added, "is the same one you have to your confidential sources. Some won't go along with it and will request legal procedures. We also get stuff from the phone company. Years ago we got the stuff almost across the board."

"Recently," the source went on, "there was trouble in New York, a suit or something, and now many of them request legal procedures. It depends on the ingenuity and resourcefulness of the agent and the willingness of the man in charge. If an agent goes to the wrong individual in the company, well, he won't cooperate."

A Soundproof Room

Mr. Wall said that he went to the Internal Revenue Service for information on one of the New Left people he was investigating sometime between April and June, 1969, and was taken to a soundproof room in the basement of the I.R.S. building.

"The room had no name on the door and it had several locks," Mr. Wall said. "Inside were two guys, who seemed surprised that I had shown up. On a long table in the middle of the room were piles and piles of manila folders. It turned out they were investigating the taxes of these people and my man's folder was on the table."

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al.,	)	
Defendants.	)	

MOTION BY DEFENDANT GEROULD PANGBURN FOR JUDGMENT ON THE PLEADINGS

Defendant Gerould Pangburn, through his undersigned counsel and pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure, moves this Honorable Court for judgment on the pleadings in his favor in that the complaint fails to state a claim against him upon which relief can be granted.

In support of this motion defendant Pangburn relies upon the record of this action and the attached memorandum of points and authorities.

Respectfully submitted,

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9/16/81

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

MOTION BY FEDERAL DEFENDANTS
FOR JUDGMENT ON THE PLEADINGS

The federal defendants,*/ through their undersigned counsel and pursuant to Rules 8(c), 12(b)(6), and 12(c) of the Federal Rules of Civil Procedure, move this Honorable Court for judgment on the pleadings in their favor in that the claims are barred by the applicable statute of limitations, 12 D.C. Code § 301, and thus the complaint fails to state a claim upon which relief can be granted.

In support of this motion the federal defendants rely upon the record of this action, the attached exhibits, and the attached memorandum of points and authorities.

Respectfully submitted,

STUART E. SCHIFFER
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Confessions of an FBI agent

Robert Wall knows first-hand what goes on inside the FBI's Washington field office, and Robert Wall is leaving the country

About seven years ago, Robert Wall joined the FBI because he wanted to "do something for good in the world, as naive as that sounds, and the FBI stood for all the good things." He resigned from the Bureau in 1972 after five years of service and today, at 33, he's planning to resign from the United States, at least temporarily, and move with his wife and three children to a small, isolated farm in Nova Scotia.

Both actions, rather drastic, are caused by varieties of disillusionment. And, by Wall's broadening quest for a life that makes sense to him.

The tale of his disillusionment with the FBI is traced in the following article by Wall (parts of which appeared in *The New York Review of Books*) and a second piece in next Sunday's *Potomac*.

It was not a single event or experience in the FBI that forced Wall's decision, but rather, as he said in a recent conversation, "the overall experience. I suppose more than anything, the repression of [illegible] human [illegible] with the Bill of Rights and [illegible] you have no rights and so it [illegible] you wouldn't expect [illegible] and the [illegible] all [illegible] you do expect [illegible] especially the treatment of black minorities."

When he resigned, his official reason for doing so was to attend law school. (That holding a law degree was not a requirement for an FBI agent was one of the first differences between the bureau's public image and its reality Wall encountered.) "I didn't burn any bridges when I resigned. I was more cautious than and I didn't want any bad references in my personal fitness repons. I had no thought of going back, but was concerned about getting past the ethics board of the law association, if I had a bad FBI record."

Wall returned to Buffalo, where he was born and raised, where his large family still lives today. It is a family with a strong Catholic tradition: two of Wall's older brothers are priests, and he was educated in seminaries through high school, college and a year of post graduate studies, nearly becoming a priest himself. "They think I'm a radical," he said recently, "but they try to be very Christian in their attitudes. There is no open animosity. Nobody argues in our family."

In the fall of 1976, he entered law school at New York State University in Buffalo, believing that the law offered him his second chance "to do something for good . . . something that benefited mankind." Last January, he resigned, again having realities betray his ideals. "The law, as it's constituted today," Wall says, "cannot answer the problems we have in society."

While attending law school, Wall became active in various causes—the Harrisburg Defense Committee, the Buffalo Defense Committee—and he "attempted to point out and stop arbitrary actions of the police department in Buffalo. You know, there'd be demonstrations, and demonstrators got beat up, and we'd file complaints." But the gap between his law classes and what was supposed to be, and what he found in the streets and what was, grew hopelessly wide in Wall's eyes. "I was turned off to law as an effective way to change things."

There was another reason he gave up on law school and decided to move to Nova Scotia.

"I came out of the Bureau looking for a different type of life. And I began to see that as a lawyer, I'd have the same life style, the same emphasis on competition for success, the same influences on my kids . . . I'm happier now. Before I was making $23,000, drove a fancy car. Now we live in a changing neighborhood with a broken-down jeep wagon. But the change drew us close together, as people and a family. I have more time with the family."

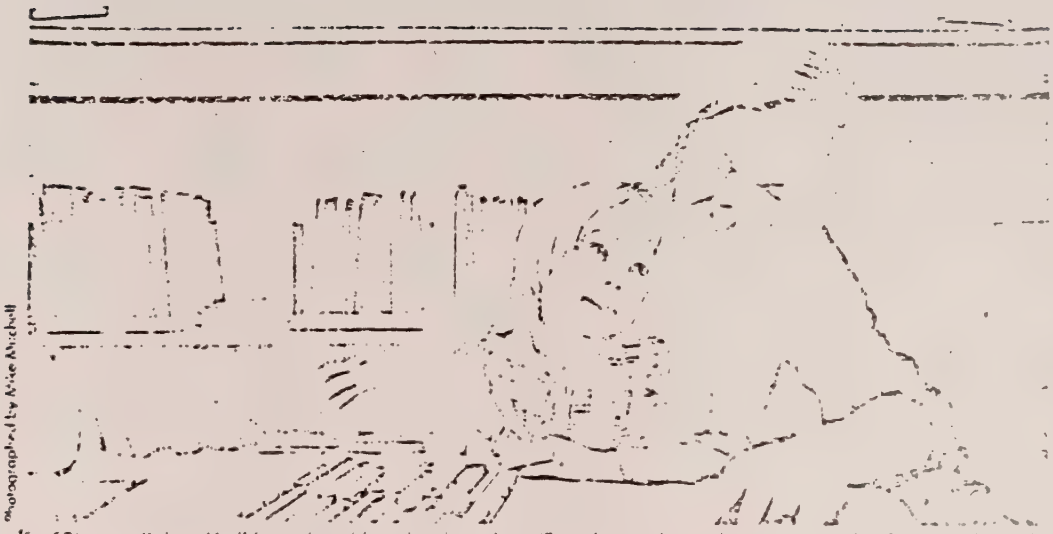
He views Nova Scotia, in part, as an extension of his effort to create a "different kind of life."

"We'll be living in a relatively isolated situation and be able to deal with family and society on a different level . . . I decided on Nova Scotia for a few reasons. First, I wanted to get out of the country, so that we could get a perspective on the country you can't get any other way. Then, Nova Scotia is an economically depressed area, so land is cheap. And though we spent only two weeks there, we found it physically very beautiful. And we have some friends up there.

"A Cop-out? Yeah, everyone asks me that, and I have three things to say in reply. To begin with, my responsibility to my family comes first. In Nova Scotia, I think we'll grow even closer and I can build something for the future for them. Then, doing what I'm doing might serve as an example for others to follow. And, finally, there comes a point when you have to make an assessment of yourself and society, instead of charging ahead blindly . . . Who knows, maybe in a few years we'll be back.

"When you've come through what I've come through, you can't avoid a depression of some sort. But now, I'm not depressed. On the contrary, I look forward to a new and different life style."

— ROBERT WOOL



Photographed by Mike Mitchell

Ex-FBI agent Robert Wall helps his oldest daughter, Joan (5) with a math problem at a free school near his home in Dunlap, N.Y.

Part I By Robert Wall

In May of 1963, after serving as a naval officer for several years, I arrived in Washington, D.C., to begin my training for the position of Special Agent with the Federal Bureau of Investigation. I was both naive and apolitical. I thought of myself as an intense idealist and was convinced that the FBI was an organization in which personal integrity was highly valued. To me the organization was above all a protector of the innocent public and only secondarily the relentless pursuer of wrongdoers. In short, I was an ideal candidate for the job. I would not question; I would simply learn to do as I was told, content to believe that the FBI would never direct me wrong.

This belief managed to survive my first two years in the Bureau, during which I worked on criminal investigations and government job applications. It was when I was assigned to work in Internal Security in Washington, D.C., that I began to have my first serious doubts about the integrity of the organization, its motives, and its goals.

The Washington Field Office is the operating arm of the FBI in Washington, D.C. Like other field offices, we reported to the Bureau's Washington headquarters, but our office was one of the largest. Assigned to the office were between 500 and 600 agents, broken up into squads of from a handful to 50 or 60. Two squads worked only on applications for government jobs and five or six handled criminal investigations. In addition, there were nine squads assigned to do "security" work. One of those nine was charged with investigating all of the various individuals and organizations that allegedly threatened the national security or that advocated the overthrow of the United States government by force or violence.

It was to this squad that I was assigned in May, 1967, shortly before my second anniversary as an agent. I looked forward to the assignment because anything would have looked good to me after a few months spent investigating applicants for government jobs. But I realized that all my FBI experience until then had in no way prepared me for work in security. During the training course for new agents which I had undergone in 1963, instruction on "security" meant listening to stories of the Bureau's great accomplishments, e.g., the capture of the Nazi saboteur team that landed in Florida and New England during World War II, and, of course, the apprehension of Colonel Rudolph Abel. We learned also that the Bureau had been able to break up the Ku Klux Klan and the Communist Party.

But nothing in this training was meant to define how the FBI views national security or threats to it. We were told instead that only a handful of experienced and carefully picked agents, the "cream of the crop," were selected to work in this most difficult and challenging field. Furthermore, information about the security work of the FBI was supplied on a "need to know" basis only, and there was no immediate need to tell us much more.

Later, in September, 1967, I was sent to the FBI National Academy in Quantico, Va., for a two week in-service training in "Basic Security." But this consisted mainly of an elaborate rehash of the noninformation we had received during new agents' training. Nonetheless, I was eager to learn more about the work of the squad and the men assigned to it.

The Washington Field Office occupied the entire fourth and fifth floors and part of the sixth and eighth floors of the Old Post Office Building located between 10th and 11th Streets on Pennsylvania Avenue.

I found Squad S-7's space on the fourth floor on the 11th Street side of the building. Three rooms were designated for its use. The first was utilized by the squad supervisor, the second by the supervisor's secretary, a confidential file clerk and a few filing cabinets and the third by the dozen or so agents who made up the bulk of the squad. The third or squad room, as it was called, was jammed full of desks.

Groups opposed to the war in Vietnam, the draft, the House Un-American Activities Committee and other politically deviant groups fell to the squad for investigation as did a variety of civil rights organizations such as the Student Nonviolent Coordinating Committee (SNCC), Congress of Racial Equality (CORE), Southern Christian Leadership Conference (SCLC), and later the Black Panther Party.

After introducing me to a number of the squad members who were present at the time, my new supervisor directed me to acquaint myself with the work of the squad by reading through sections of the Manual of Instructions which pertained to Security Investigations. I found an empty desk and began to scan the seemingly endless pages of precisely ordered gibberish contained in the manual. This task was so boring and the result so meaningless that I was soon searching for any excuse to get out of the office.

In mid-morning of my second day on the squad, the supervisor came into the squad room with a teletype and laid it on the desk of an agent sitting nearby. He told the agent to get a few others who weren't busy and cover the demonstration mentioned in the teletype. A group gathered around to see what the assignment was and I joined them. Anxious for any diversion I volunteered to assist. A number of others also signified their willingness to take part in the coverage. No one who expressed an interest was refused. It reminded me of the city room of a newspaper in an old movie where the editor comes rushing in yelling that there's a big fire in the old Glutz Warehouse and orders out a couple of reporters and a photographer to cover it.

No special preparations were required. The agents who had agreed to take part returned to their desks and cleaned up their paperwork and a few minutes later gathered at the door of the squad room. There were five or seven all including one who was specially trained and equipped for photography.

I had no idea of what I was supposed to do. The teletype had said simply that two busloads of steelworkers from Bethlehem Steel's Sparrow's Point Plant (near Baltimore) were planning to picket at the Department of Labor, charging Bethlehem with racial discrimination in hiring and promotion and demanding that the Department of Labor step in to protect the rights of the workers discriminated against. I remember asking at the time, "Why are we covering this demonstration?" The answer, which I accepted unquestioningly at the time, was something to the effect that the FBI is charged with the responsibility of reporting on situations from which possible racial violence could arise. It was a [illegible] and was easily accepted. The riot in Watts was still fresh in memory. The Congress of Racial Equality (CORE) was sponsoring the demonstration. I knew of a case in the office titled "Cominal Core" (shorthand for Communist Infiltration of CORE). And I reasoned that we wouldn't even have such a case unless there was a good reason to believe that the Communists were trying to take over the civil rights movement. So, logically, we could cover the demonstration to guard against any attempt to provoke racial violence.

I also asked what I was supposed to do. The answer here was simply that I should stand discreetly near the picketing, observe and record any signs being carried, try to identify the leaders or spokesmen of the group and determine, if possible the full extent of the group's plans. And so I spent the afternoon standing near the Department of Labor watching about 100 people march about in a circle, carrying signs, chanting and singing until a small delegation from the demonstrators met with some Labor Department officials inside the building. The remaining pickets gathered in the Departmental Auditorium located next door and were addressed by James Farmer who was then a former director of CORE. He spoke movingly of the struggle for civil rights in the South and how demonstrations such as the one which had just taken place were carrying on the spirit of that struggle in the North. Again I wondered why we were covering the demonstration when it seemed more consistent that we should have been there, if at all, to protect the marchers rather than surveil them.

I received my appointment to the FBI just one month after I was released from active duty in the Navy. In my final year of active duty I was stationed near Washington and looked there for a job for the time when I would be getting out. I had long considered joining the FBI and to facilitate this had begun going to Law School at night. I was then still under the impression that to be a Special Agent of the FBI required that you be either a lawyer or an accountant. Acting on instinct, one afternoon when I was in Washington I dropped in at the FBI headquarters building and went to the personnel office. I wanted to find out if there was any way in which I could work for the Bureau while I completed my studies at Law School. The secretary in the personnel office asked me a few questions about my current status with the Navy and then provided me with some applications for the job of Special Agent. Encouraged by this, I filled out the forms and a few weeks later stopped by once again, intending to drop them off and spend the rest of the day sightseeing in D.C. The same secretary then asked me if I had a few minutes to take a few tests and perhaps be interviewed briefly. My affirmative response began a day-long session of tests and interviews which terminated near 6 p.m. that evening. The tests seemed quite simple. One was a spelling test of 30 or so words and another was a matching test which required that the names of famous persons such as Stalin and Tito be joined with their true given names.

The interviewers repeatedly asked why I wanted to join the FBI, as though my response to this query would in some way tell whether or not I was qualified to get the job.

Less than a month after my release from active duty in the Navy, I received a telegram advising me that I was being offered an "excepted" appointment to the FBI to commence on 5/10/65 and if I accepted, I was to wire my reply immediately. I didn't know what an "excepted" appointment was but nonetheless I readily accepted and so on 5/10/65 found myself in the lobby of the Old Post Office Building looking for directions to the training division.

My strongest recollection of the three months that followed was that I spent most of my time fighting the impulse to fall asleep. However, the threat of surprise quizzes and the realization that a career hung in the balance aided in the fight. Almost seven of the 12 weeks were spent in a classroom on the sixth floor of the Old Post Office Building where from 9 am until 6 pm, with eight 10-minute breaks on the hour and an hour for lunch, we were verbally assaulted by a variety of individuals, each of whom prefaced his remarks by reciting what seemed to be a formula: "What I'm going to tell you will be the most important thing that you'll hear in the course." Except for the three weeks we spent at Quantico, Va., learning how to point a gun in the right direction, the only break in the monotony was speculating about the places where we might be sent for our first office assignment.

On our last day in Washington, my wife along with the wives of four other agents who happened to be in D.C. at the time were given a guided tour of the FBI headquarters ending in a visit and short lecture by Asst. Director J. H. Gonder. The lecture consisted of a streamlined course in how

to be a "good FBI wife." It was a condensed version of the socialization which we as new agents had received over the period of 12 weeks. He told them how they were expected to dress, how to behave in public and that they should refrain from making any public statement, even to neighbors, about politics because what they said as wives of FBI agents would reflect on the Bureau and the careers of their husbands.

It was understood among agents that if your wife somehow embarrassed the Bureau, say, became active in some peace or civil rights organization the Bureau considered radical, you could expect to be put on the transfer circuit, which meant being transferred from one undesirable office to another, until you had enough and quit.

My wife resented Casper's lecture and attitude, rejecting as unreasonable most of what he said. In part, this led us to resolve to keep our personal lives separate from the Bureau and to avoid as much as possible socializing with other agents and their wives when I was off duty.

In my first assignment in Miami, Fla., where I handled routine criminal investigations such as interstate transportation of stolen motor vehicles, this resolve led us to take an apartment in the city in a section where recent arrivals from Cuba were making their homes, rather than in the suburbs where most of the other agents lived. What little socializing we did was mainly among the Cuban refugees. Wives of agents in Miami had a club, but my wife was not a part of it.

My assignment to the Washington Field Office's Squad S-7 (Internal Security) coincided with stepped up activity of the peace movement. The anti-war movement was rapidly becoming a movement of national significance and the FBI was gearing up to investigate what was becoming, in its eyes, a threat to national security.

The heyday of this squad was during the late '40s and early 50s when those who were called Communists, pinkos, reds, Commie symps, fellow travelers, and sundry other names were being "discovered" and routed from all levels of American society. By the time I arrived on the scene the squad was jokingly referred to by some as "the graveyard," owing to the advanced age of some of the agents and the motionless manner in which they conducted their investigations now that their prime had passed. Of the dozen or so agents on the squad, all were near or past their 20th year of service in the Bureau. Most of them had spent the better part of their careers on the squad as "red chasers."

Each of the older agents would willingly relate how he had shared in the FBI's successful smashing of the Communist Party. The stories most often had the flavor of back fence gossip, for they concerned not some insidious plot to overthrow the government, but rather the clandestine love affairs of various Party members.

One agent told me that he spent 12 years of his Bureau service in "lookouts." A lookout is a place where an agent can sit (sometimes stand, kneel, lie, or squat, but usually sit) unobserved and look out to see what the person under investigation is doing. One of these lookouts which he recalled fondly was in a hotel room across an airshaft from a room rented by a Communist Party "angel" in a downtown Washington, D.C., hotel. In fact the agent had spent some years of his life peering across the airshaft at his wholly innocuous subject. The blinds in the room he watched were never closed. He liked to tell of the lively sexual activities he had seen. He seemed to think that, in the absence of other evidence, they confirmed that something subversive was taking place.

Another agent told of months spent watching the studious home of a suspected "Commie" where the only information of value obtained was that after the suspect left for work in the morning his wife would signal to her lover, who lived two street

away, by switching on the back porch light. The lover would then jump in his car and race over for a morning visit. The agent's report indicated the time elapsed from the moment when the porch light went on until the lover arrived panting at the door, and then the length of his stay. The lover was not known to be a member of the Party, but was suspected of being a sympathizer, which may have been the justification used by the agents to account for the time they spent watching that particular house.

By 1967, the Communist Party in Washington, D.C., had only three members remaining. The main function of the squad then was to verify the residence and employment of the persons who once had been subjects of FBI investigation and who were still considered dangerous enough to keep track of, even though they were no longer active with the Party or any other subversive group, for that matter. Every three, six, nine, or 12 months the files on these persons would be reopened and assigned to an agent on the squad who would make certain that the individual still lived at the same address and worked at the same job.

To accomplish this task, the agent could use several methods. He could personally observe the subject at his home and follow him to work. Or he could request the agents handling one of the three remaining informants familiar with former Party members to ask the informants about the man in question. The latter method was usually chosen since it would eliminate any real work for the agent. After the informant had reported, the case could then be closed again. In closing the case, the agent could either certify that the subject was still worthy of the Bureau's attention or try to give him a lower priority, thereby lengthening the interval before the file had to be reopened. It was simpler and required much less paperwork to certify that the subject still needed watching. Thus the investigations of hundreds of perfectly harmless people continued on through the years.

Also by 1967, the antiwar movement was growing from its lean beginnings to a movement of national significance. The response of the Bureau was consistent with its history. It determined that the movement was a part of the larger Communist conspiracy to overthrow the United States government. Having decided this, the Bureau set about to investigate the movement to show the existence of the conspiracy.

Proof sufficient to satisfy the Bureau was readily available. For example, it was noted that among the 35,000 to 40,000 persons who took part in the march on the Pentagon in October, 1967, approximately 20 persons who had once been named as members, suspected members, or sympathizers of the Communist Party were reported to be in the crowd. A few among them had actually assisted in organizing the march. Although the Bureau always insists that it neither draws conclusions nor makes recommendations from the facts it gathers, the FBI report on the march on the Pentagon was leaked to the press and its impact was serious. The thousands who marched to protest the Vietnam war in Southeast Asia were publicly labeled as mere pawns in a Communist master plan to spread dissent throughout the nation. They had been duped into giving aid and comfort to the enemy and demoralizing our fighting men.

Had the Bureau believed its own propaganda, it would have investigated

only the "Communist agitators" in the antiwar movement. Instead we were directed to investigate all the leaders in all the local peace groups and to determine among other things the source of any money used to finance the movement. From there it was a simple step to the investigation of anyone connected to the peace movement in any way. The number of investigations was limited only by the time available and the problem of distinguishing the organizers and leaders of mass rallies from the passive followers.

To deal with the peace movement the FBI followed its usual practice of planting informants. It was easy to recruit young people to infiltrate the antiwar organizations and other groups in the so-called "New Left" since large numbers of volunteers were needed to hand out leaflets, run mimeo machines, answer phones, stuff envelopes, and similar chores connected with political organizing. All one of our FBI informants needed to do was walk into the office and state briefly that he was opposed to the war and wished to volunteer his services. He would seldom be challenged to prove his allegiance to the movement. Then, with little additional effort, he had access to mailing lists, names of contributors, copies of leaflets and handbills, and was able to report in detail on any organizational meetings that might take place.

Since an organization gave an informant a convenient base from which to operate, the Bureau tried to place informants in all the organizations likely to participate in any mass march or demonstration. Then if a coalition of groups was formed to plan a large rally, at least one informant would, we hoped, be among those selected to represent a group when the coalition met to plan its activities. Frequently this was the case.

The informants were always directed to look especially for any indication that violence was being planned by any group or individual within a group. This was the rationale by which the Bureau justified its infiltration of these political organizations, although during my three years working on radical groups I never found any evidence that would lead to a conviction for criminal violence.

But the Bureau also had an active counterintelligence program which was titled "Cointelpro—New Left." This program was designed to develop means to thwart and undermine the activities of any organization that fell into the category of "New Left." A frequent tactic was to leak stories to the press and television shortly before any mass march or rally. This was easy enough to do. Agents in our offices would write often fanciful press releases warning that violence was expected on the day of the rally, or that the organizers of the march were in contact with Hanoi, or that some known Communists were active in organizing the march. Our superiors in the Internal Security Division at FBI headquarters would then pass on the information to conservative newspapers, which published it immediately. The purpose of such stories was not only to influence the general public but to scare away those whose commitment was weak and thereby reduce the number of persons who might otherwise attend.

Another purpose of the program was to create dissent among the various groups involved in the New Left to prevent them from working together. In one case we addressed a letter to the leaders of the National Mobilization Committee (NMC) [illegible] that the blacks in Washington, D.C., would not support the upcoming rally of the NMC unless a $20,000 "security bond" was paid to a black organization in Washington. At the same time we instructed some informants we had placed in the black organization to suggest the idea of a security bond informally to leaders of the organization. The letter we composed was approved by the Bureau's counterintelligence desk and was signed with the forged signature of a leader of the black group. Later, through informants in the NMC, we learned that the letter had caused a great deal of confusion and had a significant effect on the planning for the march.

I should stress that such "counterintelligence" activities were carried on frequently, although some were quite absurd. For example, some of the agents in our office tried to confuse peace demonstrations by such collegiate tactics as handing out leaflets giving misleading information about the time and place the marchers were supposed to meet.

The FBI claims to be a nonpolitical organization and asserts that it is not a national police force. But in its intelligence and counterintelligence work on the New Left it was engaging in activity that clearly was political. Moreover, in trying to suppress and discourage a broad-based national political movement, it acted as a national political police. If

"In trying to suppress . . . a broad-based national political movement . . . the FBI acted as a national police force . . ."

"Had the Bureau believed its own propaganda, it would have investigated only the 'Communist agitators' in the anti-war movement . . ."

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The bureau leaked rumors of violence before mass marches to scare away those whose commitment was weak.

The heyday of the squad ... was during the late '60s ... when those who were called Communists were being 'discovered' and routed from American society.

[illegible]

Robert Wall

I

In May of 1965, after serving as a [illegible] for several years, I arrived [illegible] Agent [illegible] the Federal Bureau of [illegible] interest and was convinced that the FBI was an organization in which [illegible]

[illegible] Internal Security [illegible] D.C., [illegible] of the [illegible] and its goals.

The Washington Field Office is the [illegible] in Washington, D.C. [illegible] offices, we [illegible] one of the largest. Assigned to the office [illegible] worked only on applications for government jobs and five or six handled criminal investigations. In addition, there were nine squads assigned to do "security" work. One of those nine was charged with investigating all of the various individuals and organizations that allegedly threatened the national security or that advocated the overthrow of the United States government by force or violence.

It was to this squad that I was assigned in May, 1967, [illegible] before my second [illegible] agent. I looked forward to the assignment because anything would have looked good to me after a few months spent [illegible] jobs [illegible] World War II, and, of course, the [illegible] of Colonel Rudolph Abel. We learned also that the bureau had been able to break up the Ku Klux Klan and the Communist Party.

But [illegible] to define [illegible] national security or threats to it. We were told instead that only a [illegible] of experienced and carefully picked agents, the "cream of the [illegible]," were selected to work in this most difficult and challenging field. Furthermore, information [illegible] need to tell us much more.

Later, in September, 1967, I was sent to the FBI National Academy in Quantico, Virginia, for a two week

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in-service training in "Basic Security." But this consisted mainly of an elaborate rehash of the noninformation we had received during new agents training. Nonetheless, I was eager to learn more about the work of the squad and the men assumed to it.

The heyday of this squad was during the late [illegible] when these [illegible] were called Communists, [illegible] Commie Symps, [illegible] were being "[illegible]" and routed from all levels of American society. By the time I arrived on the scene the squad was [illegible]

[illegible] the FBI [illegible] of the Communist Party. The stories most often had the flavor of back fence [illegible] nment, but rather the clandestine love affairs of various Party members.

One agent told me that he spent twelve years of his [illegible] service in "lookouts." [illegible] an agent can sit (sometimes stand, kneel, lie or squat, but usually sit) [illegible] One of these lookouts which he recalled fondly was in a hotel room across an airshaft from a room rented by a Communist Party "angel" in a downtown Washington, D. C., hotel. In fact this agent had spent some years of his life peering across the airshaft at his wholly innocuous subject. The blinds in the room he watched were never closed. He liked to tell of the lively sexual activities he had seen. He seemed to think that, in the absence of other evidence, they confirmed that something subversive was taking place.

Another agent told of months spent watching the suburban home of a suspected "Commie" where the only information of value obtained was that after the suspect left for work in the [illegible] would [illegible] to her [illegible] on the back [illegible] light. The [illegible] time [illegible] then [illegible] was [illegible] of the Party [illegible] a sympathizer, which may have been the justification used by the agents to account for the time they spent watching that particular house.

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To accomplish this task, the agent could use several methods. He could personally observe the subject at his home and follow him to work. Or he could request the agents handling one of the three remaining informants familiar with former Party members to ask the informants [illegible] the man in question. The latter method was usually chosen since it would eliminate any real work for the agent. After the informant had reported, the case could then be closed again. In closing the case, the agent could either certify that the subject was still worthy of the [illegible] [illegible] much [illegible] [illegible] work to [illegible] that the [illegible] Thus the [illegible] of perfectly [illegible] continued on through the years.

II

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Proof sufficient to satisfy the bureau was readily available. For example, it was [illegible] to forty [illegible] part in the march on the Pentagon in October, 1967, approximately twenty persons who had once been named as members, suspected members, or sympathizers of the Communist Party were reported to be in the crowd. A few among them had actually assisted in organizing the march. Although the bureau always insists that it neither draws conclusions nor makes recommendations from the facts that it gathers, the FBI report on the march on the Pentagon was leaked to the press and its impact was obvious: the thousands who marched to protest the war in Southeast Asia were publicly labeled as mere pawns in a Communist master plan to spread dissent throughout the nation. They had been duped into giving aid and comfort to the enemy and demoralizing our fighting men.

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[illegible] were [illegible] [illegible] any [illegible] [illegible] within a group [illegible] political [illegible] with [illegible] my three years working on radical groups I never found any evidence that would lead to a conviction for criminal violence.

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Another purpose of the program was to create dissent among the various [illegible] in the new left to [illegible] In one case we addressed a letter to the [illegible] of the National [illegible] tion [illegible] the [illegible] Washington, D[illegible] not [illegible] the upcoming rally of the NMC [illegible] a twenty thousand dollar "security bond" was paid to a black organization in Washington. At the same time we instructed some informants [illegible] had placed in the black organization to suggest the idea of a security bond informally to leaders of the organization. The letter we composed was approved by the bureau's counterintelligence desk and was signed with the forged signature of a leader of the black group. Later, through informants in the NMC, we learned that the letter had caused a great deal of confusion and had a significant effect on the planning for the march.

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III

The [illegible] been [illegible] about college campuses. It wants to know what is happening on the campus, yet it is afraid of being charged with [illegible]

[illegible]

[illegible] student [illegible] a cautious note. We [illegible] to determine who was responsible for the demonstrations and uprisings on the campuses, on the theory that they were organized by outside agitators traveling around the country, but not to conduct investigations on campus. We were told to plant informants in violence-prone student groups but not to use students themselves as informants. Then as campus activity increased we got the green light to recruit students again but were warned to choose only those who were "mature" and [illegible] those students [illegible] were to be [illegible] the bureau was not interested in "legitimate campus activity" (a term as definable as "New Left").

I was understandably somewhat anxious when in November, 1967, I was assigned the case titled "Students for a Democratic Society (SDS)." Here was the organization that the bureau had singled out among all the other young activist groups for special attention. I was told that I had to prepare a comprehensive report on all SDS activities in the Washington, D. C., area in less than a month. Every campus SDS chapter was to be identified, as were the names and backgrounds of all officers of the various groups, the number of members in each chapter, the activities of each group, including especially any activity where violence or destruction of property took place.

The agent previously assigned to the case assured me that a brief letter to [illegible] there was no significant SDS activity in Washington, D. C., a fact that he had [illegible] the [illegible] particular [illegible] was at the time moving up the [illegible] of bureau success to a supervisory position and I felt certain that his [illegible] of the SDS case was largely [illegible].)

With very little effort I was able to learn that there were already four campus SDS chapters in the city and an SDS regional office had just been

set up. Realizing that it would be impossible in the time remaining to compile all the information demanded by the bureau, I chose to imitate my predecessor and reported that there was no significant SDS activity in the Washington, D.C., area. Shortly thereafter, when the squad was beefed up, I arranged to have the SDS case reassigned to one of the newcomers.

The bureau's ambivalence regarding campus unrest was apparent when the Washington Field Office received a request from then Assistant Director William Sullivan to analyze the activity on campuses, point out the causes, and recommend the appropriate FBI policy for dealing with student movements. Since our squad was closest to the problem, the job of preparing the [illegible] Our squad [illegible] elected to [illegible] the task to [illegible] agent [illegible] This agent had little [illegible] college matters but had as yet [illegible] available. He [illegible] being able to [illegible] to see what the [illegible] to hear in the [illegible] to which it [illegible] tomed.

When I learned of the choice I was disturbed. The agent chosen, if described by a friend, would have been called an extreme conservative. In the banter of the office I had hung the label "fascist pig" on him. He in turn called me the "Father Groppi" of the office, or "Grop" for short. I knew that he saw a conspiracy in every campus demonstration and felt that swifter police action was the first and best answer to any problem of disruption by college students. So I knew [illegible]

At this point I was still naive enough to believe that the bureau was amenable to change and I saw this paper as an opportunity to "affect the bureau from within." So I went to my supervisor and asked for his permission to take over the assignment of preparing the paper for Sullivan. He refused because, in his words, "You're too young to place the SDS in proper historical perspective with the old guard Communist organizations." Undismayed, I "borrowed" the rough draft of my colleague's paper and proceeded to draft a reply and counterproposal. In essence I contended that university administrators needed to re-evaluate the role of the university in our society and take the initiative away from radical agitators by instituting needed changes before the demand for these changes became the [illegible] point for student discontent.

I concluded that if university administrators could recognize the [illegible] behind the student uprisings, meet with student representatives, and be willing to compromise, they would generally be able to avert destructive confrontation. I recommended that the bureau keep its hands off the universities, even those that had already [illegible] because the FBI had no legal justification to intrude; any intrusion would, moreover, be taken by students as an indication of attempted repression by federal authorities.

When I dropped my paper on the supervisor's desk, he handled the situation with the skill of a diplomat. Rather than choose between the papers, he gave both to a third agent to prepare a compromise paper to be presented to Sullivan, setting out the principal points on both sides of the issue. He promised also that I would have the opportunity to make an oral presentation to Sullivan at a later date.

About two weeks later, I returned to the office unexpectedly in mid-morning to discover that a meeting with Sullivan had been arranged at 1 P.M. that day. Angry at what appeared to be an attempt to keep me out, I went to the Coordinating Security Supervisor (my supervisor's supervisor) who had originally received the request from Sullivan that set the whole [illegible] flurry in motion. In his [illegible] that no [illegible] had been intended, I had [illegible] [illegible] I'd be allowed to have my [illegible]

It [illegible] to me then that they did not want me to attend the meeting but they didn't want to [illegible] about it. [illegible] argument while I awaited the one o'clock meeting. At 12:45, just as I was bringing my shoes to a new luster, my phone rang. The Coordinating Supervisor on the other end advised me that unfortunately Mr. Sullivan's office had only four chairs for visitors and since I had been the last to request a part in the presentation and would be the fifth person, there was no choice but to exclude me. He tried to calm me with lavish praise for my initiative and willingness to tackle difficult problems [illegible] suggested that I'd accept standing room.

I was certain that my exclusion was just another example of how people on the lower levels of a bureaucracy act as a buffer for those higher up the ladder. They decided what the man at the top wanted to hear and they gave him just that. They had heard and read Mr. Hoover's statements that the SDS was a subversive group that traveled about the country seeking to destroy the institutions of higher learning and they could not make a presentation that deviated from that line.

The final result was an order directing intensified investigations of student agitators and expanded "informant penetration" of campus SDS groups. Predictably, the informants reported the names of hundreds of students who had done no more than say they were interested in SDS or had dropped in at a meeting. Our Washington squad alone opened dozens of cases on freshmen college students who attended orientation sessions sponsored by SDS on Washington, D.C., campuses. Soon we had so many new cases [illegible] agents to handle this new "threat to national security."

IV

While we were investigating intiwar groups and student activists [illegible] to handle [illegible] what were called "Racial Matters." This [illegible] was an [illegible] and frightening [illegible] one. [illegible] almost anything done by or for black people could be opened simply by labeling it a Racial Matter. Here, for example, are some of the "cases" we investigated.

A group of teen-agers from the ghetto areas of Washington, D.C., who marched to the city council chambers and demanded restoration of funds for summer jobs for ghetto youth.

Two busloads of steelworkers who picketed the Department of Labor to protest discriminatory practices at the Bethlehem Steel Sparrow's Point (near [illegible]).

A group of high-school students who staged a protest in their school cafeteria complaining that the food was not fit for human consumption.

Two members of the Student Nonviolent Coordinating Committee (SNCC) who opened a bookstore on 14th Street in northwest Washington.

The FBI quickly responded with an investigation titled "Drum and Spear Bookstore, Racial Matter."

When the poor people's march was organized to dramatize the plight of the poor in our nation and a camp was set up near the Washington Monument, this was a Racial Matter. More logically perhaps, investigations of the Ku Klux Klan, the American Nazi Party, and similar groups were also Racial Matters.

Clearly the bureau had no rational criterion for [illegible] these investigations. The only consistent pattern that I found was that if an individual or group is black and does something to gain attention it is likely to be investigated.

O[illegible] Racial Matters [illegible] the [illegible] Metro-[illegible] 14th and U Streets [illegible] Some rocks and bottles were [illegible] at police," etc. [illegible] such a story appeared, we would receive a call from the supervisor of the Racial Desk at bureau headquarters asking what we knew about the incident. It was his firm conviction that incidents of this type were a manifestation of the conspiracy by blacks to take over their community by driving out the police.

So that we would not be embarrassed when the supervisor called, it became standard practice for one of the early arrivers in the office to scan the [illegible] like the one above [illegible] precinct to verify the names of the persons arrested, and then paraphrase the news item in a teletype message to bureau headquarters, advising them that we were following the incident and would report any further developments. A month or two later, the agent to whom the case was assigned would close it with a letter stating that the incident was apparently spontaneous and not part of a conspiracy, and giving an estimate of the damages, the names of those arrested, and the background of those who already had records in FBI files.

Often the supervisor on the Racial Desk at the bureau would request specific information about a case under investigation by the field office. The agent to whom the Drum and Spear Bookstore case was assigned received such a request. For months he had been investigating the Bookstore, watching its operations, checking out its owners, looking into its bank records, trying to ascertain the source of its funds. He had found [illegible] connected with crime, [illegible] or evil [illegible]. Now he was first asked to go to the bookstore and purchase a copy of the "Little Red Book" containing the quotations of Chairman Mao Tse-tung. It was pointless to ask what purpose the purchase of this particular book would serve. It was obvious to us that the supervisor felt that the Bookstore, by selling this book, was somehow implicated in the Oriental branch of the Communist conspiracy.

The agent dutifully made his way to the Drum and Spear where he learned that they had sold their last copy of the book. Rather than order a copy to be mailed to the supervisor, a cheeky solution which he admitted considering, he returned downtown, bought a copy at Brentano's, and duly

— 8 —

passed it on to the bureau supervisor, just as if it had come from the Drum and Spear. Thereafter, the written description of the Drum and Spear contained the note that radical literature including the "Little Red Book" of Mao Tse-tung was obtainable there.

As I worked on Racial Matters in Washington (a city whose black population comprises more than 70 percent of the total), the appalling racism of the FBI on every level became glaringly apparent to me. It seemed that every politically dissident black man was a candidate for investigation. Perhaps this racism was no worse than in other branches of government, but it was extremely discouraging to find it so firmly entrenched in an organization of [illegible] men charged with responsibility for investigating violations of the civil rights laws.

The documents stolen from the M[illegible] Pennsylvania office of the FBI [illegible] the bureau. In one [illegible] that J. Edgar Hoover directed to an [illegible] of the FBI he [illegible] that "all black student [illegible] and [illegible] organized to protect the demands of black students which are not presently under investigation, are to be subjects of discreet preliminary inquiries, limited to established sources and carefully conducted to avoid criticism, to determine the size, aims, purposes, activities, leadership, key activists and extremist interest or influence in these groups." The stated purpose for these investigations was that these groups are the "target for influence and control by violence prone Black Panther Party (BPP) and other extremists."

[illegible] to be investigated were black could explain the horrendous abuse of logic that the bureau used to justify this invasion of campuses throughout the country. J. Edgar Hoover had publicly announced that the small and largely ineffectual Black Panther Party was the greatest single threat to the security of the country. Having itself created the threat, the bureau set out to neutralize it. Even if Hoover could have seriously documented his charges against the Panthers, which he never did, it was absurd to investigate hundreds of people whose only connection with the Black Panther Party was that the party was trying to influence them. Hoover might similarly have justified an FBI investigation of every member of a "working class" union because the Communist Party directed its propaganda and organizing effort at workers, [illegible] student [illegible] SDS sought to influence and control students.

Nor was this assault on the black student unions an isolated incident. I [illegible] for example the FBI's interest in the Smithsonian Institute when it opened an annex in the [illegible] Black [illegible] section of Washington, D.C. One of the annex's first events was a program for Black History Week centered on the life and contributions of Frederick Douglass. The FBI actually paid informants to attend the program and report the contents of the speeches given during it.

In the case of Stokely Carmichael the FBI was particularly determined and vicious. When he moved to Washington, D.C., in December, 1967, our squad kept him under surveillance twenty-four hours a day, following him about the city from lookouts and cars

and on foot. The investigation became even more intense a few days after Martin Luther King was assassinated. When blacks in Washington, D. C., as well as in many other cities, outraged by the murder, rioted for a day and a half, in the Washington Field Office a fifty-man special squad was assembled to get Carmichael for inciting to riot. We were directed to gather evidence showing that Carmichael had plotted, planned, and directed the rioting, burning, and pillage that took place in Washington, D.C. Fifty agents spent their full time for over a month on this one case.

One man who later admitted that [illegible] exaggerated [illegible] others [illegible] Dr. King's [illegible] privately [illegible] that [illegible] have a [illegible] submitted [illegible] reports on the minute by minute activities of Carmichael that were heavily weighted to imply that he had actually incited the mobs. Had Carmichael not decided to leave this country and go to Africa, the FBI, I am confident, would eventually have found something with which to bring an indictment against him.

Quite by accident I learned that the Internal Revenue Service (IRS) was aiding in the hunt for something with which to pin a charge on so-called "Black Militants." In early 1969 I was checking the background of a former member of SNCC, a man I had been investigating for almost two years. On three occasions I tried to close the case because I could find no indication that the subject was doing anything that would warrant an FBI investigation. Each time permission was refused, his status as a former member of SNCC being sufficient justification for going on with the investigation. I learned that the IRS had requested his arrest record from the Identification Division of the FBI. When I went to the IRS I [illegible] list of "known militants" [illegible] After talking to several IRS officials I was [illegible] in the basement of the IRS headquarters in Washington where I found a file on my subject among hundreds of others piled on a long table.

V

There are hardly any limits on the bureau's activities in compiling political information, particularly about the new left. A case in point is the Institute for Policy Studies, an organization set up by dissenting officials in Kennedy's administration to carry out independent studies in international and domestic questions. The Institute

caught my attention shortly after I began investigating the new left. Reports from FBI informants showed that many of the leaders and spokesmen of antiwar and civil rights organizations called at the Institute when they visited Washington.

I reasoned that if there were a conspiracy that linked all these groups the Institute was the logical place to look for it. I drafted a memo to that effect and requested that a case on the Institute be opened and assigned to me. My supervisor quickly agreed: he was then trying to increase the case load of the squad to justify a request for an increase in manpower.

Most of the information about the [illegible] and I [illegible] dossier [illegible] including [illegible] [illegible] founders, sources of its [illegible] [illegible] and a [illegible] scholarly [illegible] by it. After [illegible] the Institute was not the secret mastermind of [illegible] to overthrow the government [illegible] what I [illegible] a "think-tank of the left," where a wide variety of current and former government officials, lawyers, journalists, radicals, and others were holding seminars, doing research, writing reports, etc. I closed the investigation. To do otherwise, incidentally, would have meant a mound of paperwork that would have occupied me full time for months.

About a year later another agent newly assigned to the squad came to see me with the closed file of the Institute and asked whether I thought the case [illegible] This agent, like so many others, had strong right-wing views and could not believe that the Institute was merely sponsoring seminars and doing the other work I had described. It seemed necessary to him to think that a grand new left conspiracy existed. In spite of my opposition, he had the case reopened and began a full-scale investigation of the Institute. He began monitoring the checking account of the Institute to determine where its money was going. He asked for telephone company records and compiled a list of the Institute's long distance telephone calls. He attempted to place informants in the Institute as student interns and gathered every available paper published by it. Individual investigations were then opened on the people who worked for or received money from the Institute.

When I left the bureau in April, 1970, the case on the Institute was still being investigated with [illegible] papers [illegible] on it [illegible] accumulated. So far as I have been able to determine, the FBI has found no evidence whatever of any illegal activity by the IPS, but the Institute continues to be investigated.

My experience has shown me that the FBI in its pursuit of blacks, the antiwar movement, and college activists was not an impartial, disinterested finder of fact but rather a relentless guardian of orthodoxy, a police force which sought to cause harm to movements that boldly questioned the policies of the government. It engaged in these activities not simply because of the political prejudices of the director and his staff, but, to a large extent, to justify its own existence. Each attack on any outspoken critic of American institutions was [illegible] to show the FBI as the indispensable

protector of the public. To each slanderous name-calling or alarmist leak to the press, Hoover added a soft-spoken if tendentious appeal to Congress for more money and additional personnel. Enemies of the public were created to justify the bureau's role as defender of the "National Security" against domestic foes who sought, according to Hoover's propaganda, to subvert the country.

This is not to say that an effective federal investigative agency is not needed to deal with crimes or that the FBI itself has not done efficient and honest criminal work (although it has [illegible] years [illegible] convinced me that [illegible] the public [illegible] laws [illegible] the [illegible] is all [illegible] time, all of the investigations I have referred to here have resulted in adding more names and dossiers to the millions in the FBI's files. The FBI is thus creating a proliferating store of secret police files on innocent people, often based on bizarre allegations and dubious information, and sometimes on nothing at all.

What I saw and did as an agent for the FBI exposed for me the wisdom of the old question: Who will watch the watchers? I have no easy answer to it. □

Former FBI Man Discloses IRS Tactics Against Radicals

By ROBERT M. SMITH
New York Times News Service

The Internal Revenue Service has acknowledged that it has a special seven-man unit whose sole job is to collect information on extremist political organizations and leaders of the left and right to uncover situations where there may have been tax evasion.

Leon Levine, a public information officer for IRS, said last night that he was not clear what criteria are used to place people in the "extremist" category. But, he said, "because of the way some of these people behave in their everyday affairs, it's reasonable to believe some of them may be violating the tax laws."

The acknowledgement came after a former FBI agent and said he saw the soundproofed room in the basement of the IRS building in which the special squad worked.

The former agent, Robert N. Wall, made the disclosure recently while discussing some of the inner working of the FBI.

He said that FBI activities included monitoring the telephone calls of the Israeli Embassy, investigating and trying to place young informants in a liberal research institute, soliciting information from banks and telephone companies in the Washington area without getting subpoenas, and attempting to foment strife within radical circles through such devices as anonymous letters.

Triggered Gang War

Wall, a [illegible] former naval officer and an FBI special agent for [illegible] years, made these disclosures in an article which will appear in the New York Review of Books and in an interview at his home in Buffalo.

He left the FBI in April 1972. He says he had become disillusioned with the bureau, and with the American life style, and is moving to Nova Scotia.

Almost all of Wall's allegations about the FBI have been independently verified by re-

See FBI, Page A-4

THE EVENING STAR
Washington, D. C., Thursday, January 13, 1972

FBI

Drive on Extremists By IRS Is Disclosed

Continued From Page A-1

liable sources in and out of government.

An FBI spokesman was asked yesterday whether the bureau tries to create dissension in radical circles, whether it monitors the [illegible] foreign embassies and whether [illegible] banks and telephone companies without subpoenas. The spokesman said the bureau would make "no comment whatsoever." A spokesman did confirm, however, that Wall had been a special agent.

A reliable source confirmed Wall's allegations about the bureau's attempts to sow dissension in extremist organizations. He said that it had also been done effectively in the case of the Ku Klux Klan and that the technique had been borrowed from FBI operations against organized crime. There, he said, an anonymous letter could result in gang warfare or the murder of a suspect.

On the special IRS unit, sources said that when it finds evidence that extremists have access to large sums of money, it passes on the information to regular tax-enforcement personnel of the Internal Revenue. Among the items checked are whether the organizations have filed tax returns and whether the organization itself is claiming a tax-exempt status that it does not actually have.

According to Wall, one purpose of the FBI's counterintelligence program was to create dissension among the various groups involved in the new left to prevent them from working together.

"In one case we addressed a letter to the leaders of the National Mobilization Committee which said that the blacks of Washington, D.C., would not support the [illegible] of the [illegible] because a $50,000 "[illegible]" was paid to a black organization in Washington. At the same time we instituted some intermural warfare [illegible] in the black organization to suggest the idea of a security card information to leaders of the organization.

"The letter we composed was approved by the bureau's counterintelligence desk and was signed with the forged signature of a leader of the black group.

"Later, through informants, we learned that the letter had caused a great deal of confusion and had a significant effect on the planning for the march."

Wall's article in the Jan. 27 issue of the New York Review of Books also says that some of the agents in the Washington field office, where he worked, tried to confuse the [illegible] demonstrations by [illegible] information about the time and place where the demonstrations were supposed to [illegible].

"At one time there [illegible] where we disrupted where [illegible] We [illegible] the Ku Klux Klan. We could [illegible] there is a likelihood of violence, to reduce violence."

The source went on to say, however, that with the exception of a [illegible] led by the Rev. Dr. Martin Luther King Jr., "There never was a peace march on Washington that didn't have a potential for violence."

Couldn't Understand

In Buffalo, Wall is a supporter of liberal causes ranging from the free-form Cause school—to which he sends his daughter—to the defense of a radical college student arrested with the help of a police undercover agent.

For the last year and a half he has been a law student at the Dalhousie University of Halifax but is now living, [illegible] for Nova Scotia because he feels "law cannot handle society's problems."

Wall said he was being trained to listen in on the telephone calls of the Israeli Embassy. That was also confirmed by a reliable source, who said the Federal Bureau of Investigation also monitored and taped the conversations of Arab embassies.

Wall said in the interview that during the six-day Israeli-Arab War of 1967, the bureau was short-handed and he was pressed into service at a switchboard set up by the FBI to monitor all the calls being made to and from the Israeli Embassy. He said he did not overhear any interesting conversations. As a matter of fact, he said, he had difficulty understanding the conversations—"There are different accents, you know."

Bank Criticized

Wall's article in the New York Review of Books also says that while he was a member of a security unit in the Washington office he investigated the Institute for Policy Studies, a liberal "think tank" here headed by Marcus Raskin and Richard J. Barnet. Wall recalls that he himself opened that investigation.

"There are hardly any limits on the bureau's activities in [illegible] political information, particularly about the new left. [illegible]

"In individual investigations," Wall reports, "[illegible] on the people who worked for or received money from the institute."

Wall concludes: "So far as I have been able to determine, the FBI has found no evidence whatever of any illegal activity by the IPS, but it continues to be investigated."

Barnet, co-director of the Institute of Policy Studies, said yesterday he had not been aware the FBI was investigating it until he met Wall recently.

Barnet also said the institute had affidavits from Wall saying that the bureau had seen bank records of the institute. The institute, said Barnet, is considering taking legal action against the Riggs bank for having made the records available without being served a subpoena.

John R. Cocker of the Riggs bank said today in response to a question, that "our policy has always been that we require a subpoena for any records from any government agency whatsoever, including the Congress."

According to Wall, "[illegible] would do it as an [illegible] other banks and [illegible] statements and checks. We were in [illegible] in the day time statements were sent [illegible] to go out to the [illegible]. The bank would [illegible] then send them out the next day. The agent would Xerox them or take notes. We knew it wasn't supposed to be done."

"Nothing Is Sacred"

Wall also said the C&P Telephone Co. in Washington gave the bureau telephone records without a subpoena.

Frederick W. Langbein, gen. counsel for the telephone company, said yesterday it was "absolutely untrue" that the telephone company gave the records of calls without a subpoena. The [illegible] making available the existence of a message was a violation of federal law.

OFF-AIR

A DATELINE 13 Conversation With a Former FBI Agent

Several weeks before the sudden death of J. Edgar Hoover this past spring, *Dateline 13* presented a program, "Robert Wall—Ex-FBI Agent," produced by Paul Jacobs and Saul Landau. This latest Jacobs-Landau report is a first-hand account by former agent Wall and his wife detailing their gradual disillusionment with the motives and goals of the Bureau, which Wall sees as being "essentially a secret organization [that] does a lot of things that violate our basic human freedoms and Constitutional guarantees."

Wall, who had joined the FBI in 1965, came to regard his relationship with the Bureau as a "bad trip" and at the urging of his wife he quit in 1970.

The couple now live in upstate New York. Wall is putting his experiences into a book which will be published next winter by Coward-McCann (publisher).

The following are highlights.

My name is Robert Wall. I was born and raised in Buffalo and attended grammar school and high school there. I went to St. Bonaventure University in upstate New York, where I was enrolled in Christ the King Seminary. I received my diploma from St. Bonaventure but left the seminary a year later and went into the Navy.

During my last year of naval service I started looking around for a job. I remembered the days when I was a little kid listening to the FBI radio program, and I thought I'd like to be a G-man because I believed there was a lot of integrity in the organization and that somehow I could do a lot of good as an FBI agent.

I went to Washington and found that I didn't need to be a lawyer or an accountant and that my service in the Navy, plus my bachelor's degree were sufficient qualifications.

My first office of assignment was Miami, in general criminal work. Later, I was sent to language school to learn Hebrew so I could monitor phones at the Israeli Embassy, but it was so routine and uninteresting that when I was told that there was an opening on the Internal Security Squad, I immediately volunteered.

A BAD TRIP

Everybody was trying to talk down the Squad to me. It was essentially a group of guys who had spent 2 years chasing Communists, and it was kind of a social division. However, I got the chance of assignment almost immediately.

There really wasn't much of a Communist menace to speak of in the United States, and we were kind of scrounging around for something to keep us busy. The anti-war movement was coming up at the time, so we started investigating anti-war organizations, under the title of COMINFILT. (COMINFILT is Bureau shorthand for "Communist infiltration.") This is how we justified our investigation of what would otherwise have been considered legitimate political activity. We said we were investigating because the Communists were trying to infiltrate and subvert the peace movement and, later on, the civil rights movement.

In fact, we were doing a straight investigation of these organizations, including who their members were, what their activities were and how much financial support they had.

For example, we'd investigate some guy whose wife's connection had been that he volunteered to stuff envelopes. If he wouldn't coop-

erate and agree to be an informant for us, we'd be likely to go and talk to his employer about it and drop the fact that this guy was an activist—that he might be in contact with the Communist Party and he should be watched. Of course, the object was to get the guy fired, to really mess him up.

Throughout this period, though, I had a feeling that got stronger and stronger that it was a kind of "bad trip" we were on, and that we were putting down a lot of people who weren't doing anything wrong. And it became harder and harder to do it. I didn't have these reservations at first, but right from the start my wife, Cammie, had a lot of questions in her mind.

CAMMIE WALL: Just after Bob and I were married, we were given a grand tour at the FBI Academy and the FBI building. We were shown the laboratories and other things that most people don't see. At the end of the tour we were taken into Assistant Director Joe Casper's office and given an hour's lecture on what an FBI wife can and can't do.

Most things we can't do are things we expect to be quiet and stay home. We weren't supposed to talk on religion or politics or anything like that. We were expected to be superstitious and superwives. We could, we weren't allowed to make a [illegible]

[illegible] FBI [illegible] power, too.

ROBERT WALL: At [illegible] time I [illegible] with [illegible] In a place like Main [illegible] FBI [illegible] is quite a powerful [illegible] and look at you in a special way.

INFILTRATING THE PEACE MOVEMENT

About five years ago—the fall of 1967—I began an investigation of the Institute for Policy Studies.* We were still operating under the conspiracy theory concerning the peace movement, so I reasoned that if there was a conspiracy, then the Institute was the logical place to look as the center of this conspiracy. I opened the case by writing a memo to that effect and submitting it to my supervisor. He in turn assigned the case to me.

I couldn't find out from public stuff what was really going on at the Institute, so I decided to put an informant inside. I thought he'd be recruited and indoctrinated to the point where he could, in turn, go out and conspire with others. All we had to do was have someone—anyone—who would volunteer to go into the office to steal stuff, invent jobs and things like that. Since the organization of the anti-war effort requires a large number of people to do routine office chores, it wasn't hard to get someone inside.

When it came to college campuses, we had another gimmick. If the Students for a Democratic Society had a chapter on campus, we would find out if there was perhaps a conservative group like the Young Americans for Freedom on the campus. We'd go to one of the YAF meetings or contact the official representative of the group and find out from him the names of some people who were [illegible] organization [illegible] who weren't [illegible] YAF members or independent conservatives. Then we'd [illegible] them and send them into the SDS meetings. These [illegible] students were made to order, because they were intensely patriotic and willing to [illegible] And the [illegible] we used them as [illegible] great [illegible]

It [illegible] that we [illegible] We [illegible] Washington [illegible] SDS [illegible] Then that whole place [illegible] out!"

My reaction was one of horror and disgust that he would even discuss burning the building, because there were people living on the third floor. But the reaction of my colleague was simply "Well, I'm not going to tell you to do something like that." In fact, he told the informant that he really shouldn't even consider doing something like that, but he said it in such a way that the impression was that if he did it, nobody was really going to complain about it.

It wasn't more than a week later that we got a report that the fire department had been out there. A fire had been started in a pile of leaves at the back door of the building.

*The Institute for Policy Studies was [illegible] in Washington, D.C. [illegible]

INSIDIOUS CHANGES

My decision to quit the Bureau was a gradual process. I had looked upon society as consisting of three things: the family, the church and the state. My wife and I were regular churchgoers, but we began to question the church's role in life and what it was doing. It seemed that the church was more interested in building big monuments and institutions than it was in solving real social problems.

After we came to see the failing of the church, we made an analogy and started questioning the role of the United States.

From the time we were little children in school we were taught that America was good—it could do no evil. If we had any doubts about the goodness or morality of America it was probably the result of the Communist world conspiracy to subvert us—to implant ideas in our minds which would have us betray our loyalties to the country.

But it seems to us now that the Bureau's role was not only to expose the conspiracy—if there was one—but to create the myth of such a conspiracy in the minds of the American people so that they would be willing to accept the orthodox straight American doctrine without question.

I think especially of the part my wife, Carmine, played in my eventual decision to quit the FBI. [illegible] effort on [illegible] way that made [illegible] more [illegible]

CARMINE WALL: [illegible] that he was doing could go along with that. I saw the changes in him and it was really scary. We had some big fights about it.

ROBERT WALL: Carmine felt it first, and she brought it home to me more and more as time went on, asking questions like "Why are you 'surveilling' this guy?" Or, "Why are you investigating that guy? What did he do that's so bad? What crimes has he committed?" I felt like I was under the Inquisition.

CARMINE WALL: I really didn't feel it was right. It was as if we were making other people [illegible]

GHETTO INFORMANTS

ROBERT WALL: They opened up what the Bureau called the Ghetto Informant Program, which was essentially a neighborhood grocer or dry cleaner, or bartender who would talk to FBI agents and tell us what the likelihood of a riot was in the neighborhood.

The whole thing was kind of ridiculous. If you can imagine talking to your local baker and asking him what the likelihood of a riot is, you can understand what was going on. The Bureau wanted to have an informant on almost every corner, and it was really frightening in its implications, because you had people who were being paid to be informants who really didn't have any access to criminal or security information. What we were doing was subverting, or turning one person against another all over the ghetto.

In my own experience with respect to informants in racial matters, money was the main motivating factor. This almost had to be so, because there was no ideological basis on which you could get one Black man to inform on another.

One particular informant was informing on Stokely Carmichael, who was a close friend of hers. The informant had qualms of conscience and had to be constantly reassured that what was being done was in her own best interest and in the [illegible] interests. It became very difficult at times to convince her of this.

[illegible] "[illegible] Black or State shootings? How can I continue to inform when this type of thing occurs?"

The necessity of dividing one's loyalty between the money he needs to live on and the friends and associates he has is a very hard problem for a person who's an informant.

FORGERY, TOO

I remember an incident when Tom Hayden** came to Washington and ended up at Stokely Carmichael's apartment. It was kind of disconcerting because the agents who had Carmichael under surveillance wanted to go home. They couldn't leave Hayden up there because they weren't sure whether he might take off. They finally solved their dilemma by sending one of the agents to walk under the window of

*The reference is to the clash in 1968 at South Carolina State College in Orangeburg, in which three Black students were slain by highway patrolmen, and to the 1970 incident at Jackson State College in Mississippi, in which two Blacks were killed and 12 wounded when police opened fire on a women's dormitory.

**Tom Hayden was an organizer of the Students for a Democratic Society.

the apartment. And he reported that he heard the clinking of ice cubes in glasses, so he was reasonably sure that they were going to stay there for a while because they were having a party. It also got us off the hook as to what Hayden was doing there, because the Bureau assumed that someone like Hayden, who was an organizer of a national anti-war movement, meeting with Carmichael, would be there to have a little bit of collusion about how to set up the movement and maybe cause some damage in Washington.

Prior to this meeting we had composed a letter as part of our counterintelligence program. The National Mobilization Committee to End the War in Vietnam was planning a big march in Washington at the time, and we decided we were going to try to disrupt the march and keep down the participation.

In the letter we said, in effect, that the Blacks in Washington were not going to participate in this march unless National Mobe paid $[illegible] as a security bond to a Black organization in the city. Then we forged the name of a Black leader to the letter—I think it was Doug Moore—[illegible] we signed.

At any rate, we sent the letter off. Later we learned through an informant at the National Mobilization Committee headquarters in Washington that this letter was [illegible] but [illegible] They [illegible] they [illegible] Black [illegible] in Washington [illegible] not [illegible].

I took the meeting between Hayden and Carmichael [illegible] and I think they [illegible] that time [illegible] they [illegible].

DISILLUSIONMENT

The FBI [illegible] police force. It has [illegible] dogma and an attempt to put down anyone who challenges its view of what society should be.

Our doubts about the integrity of the Bureau were progressive, and as I got into it, I found out it was becoming more and more repressive in many of the things that it did. For example, the FBI investigation of the peace marches started out by focusing on the leaders for signs of Communist infiltration. Next, everybody who was in the peace movement was being investigated.

In the civil rights field it was the same thing. The business of having informants all over the place in the ghetto was essentially causing more problems than it was solving. It was causing a lot of dissension and making people suspicious of their neighbors.

Our severe disillusionment with the Bureau started after the Democratic Convention of 1968 when I went to the office and saw it was just a solid front of guys who were sympathetic to the Chicago Police Department.

The Bureau did an investigation. They opened it with a dual legal caption: part of it was supposed to be an investigation of the causes of the riot and the other was to be an investigation of police brutality. We got a lot of demonstrators on the guys who had been hit on the head—and we took photographs of their wounds and interviewed them, under the pretext that we were doing an investigation of police brutality. We then turned around and dropped the police brutality caption of the case and carried it simply as a case of "interstate transportation to foment riot"—the famous Rap Brown law.

The final straw, I guess, was the investigation of a Black school in Washington—the Center for Black Education. The FBI supervisor on the racial desk said that this was a school for training Blacks to take part in urban guerrilla warfare.

I was assigned to the case and did an investigation [illegible] the school, and all of them without exception said that [illegible] good [illegible] it was [illegible].

This was a neighborhood that needed something like this very badly. But racism on the supervisory level in the Bureau was such that they couldn't admit the fact that this might be something good. They knew that the fact that they disliked [illegible] the people who [illegible] sufficient reason [illegible] to investigate, "survey," harass, intimidate and try to keep funds from coming into the school—which is what they were trying to do.

Shortly thereafter I left the Bureau. We had planned to stay until I had a full five years of service, but this type of incident was just too much. We finally decided to leave and find a better life—or a different life.

• • •

This past May, I happened to catch two FBI agents just down the street, talking to our local postman. For the next couple of days the postman was delivering the mail, and as he was going back down the stairs he was making [illegible] fearsome.

■■■

[illegible] a Washington [illegible]

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

RECEIVED
OCT 15 1981
JAMES F. DAVEY, Clerk

REPLY MEMORANDUM IN SUPPORT OF MOTION BY FEDERAL DEFENDANTS FOR JUDGMENT ON THE PLEADINGS AND MOTION BY DEFENDANT GEROULD PANGBURN FOR JUDGMENT ON THE PLEADINGS

On September 16, 1981, the federal defendants moved for judgment on the pleadings, arguing that this action is barred by the applicable statute of limitations. On the same date, fifteen of the defendants within the group collectively referred to as the "federal defendants" moved for judgment on the pleadings on grounds that plaintiffs have failed to state a claim against them upon which relief can be granted.

By memorandum filed on October 5, 1981, plaintiffs opposed only two of the several motions filed by the federal defendants, viz., (1) the motion by all federal defendants arguing that the action is barred by the applicable statute of limitations, and (2) the individual motion by defendant Gerould Pangburn in which he argues that plaintiffs fail to state a claim against him upon which relief can be granted. Plaintiffs also affirmatively expressed a desire that their claims against fifteen of the federal defendants be dismissed;*/ consequently, they intend to proceed with this action for damages against only defendants Charles Brennan, George Moore, Gerald Grimaldi, Courtland Jones,**/ and

*/ See plaintiffs' Motion For Leave For Voluntary Dismissal of Certain Federal Defendants, filed October 5, 1981.

**/ Defendant Courtland Jones moved to dismiss on August 20, 1981. That motion is pending.

Gerould Pangburn.*/ In addition, plaintiffs are proceeding against William H. Webster in his capacity as Director of the Federal Bureau of Investigation.

This memorandum responds to plaintiffs' arguments insofar as they relate to the issue of the statute of limitations and to defendant Pangburn's motion for judgment on the pleadings.

I. The Action Is Barred By The Applicable Statute of Limitations

Plaintiffs make two arguments in contending that this action is not barred by the applicable statute of limitations: (1) that there is no limitations period governing suits against federal officers for alleged constitutional torts, and (2) that if there is a limitations period, its running was tolled by the equitable doctrine of fraudulent concealment until April, 1976.

Plaintiffs' first argument is interesting but enjoys no juridical support. The law of this case is that the limitations period is no longer than three years, as established by 12 D.C. Code § 301(8). See Memorandum and Order, November 9, 1979, (per Pratt, J.). In addition, this Circuit has recognized that in actions against federal officers for alleged violation of constitutional rights, for which there is no federal statute of limitations, the analogous local limitations period is adopted. Fitzgerald v. Seamans, 553 F.2d 220 (D.C. Cir. 1977); Smith v. Nixon, 606 F.2d 1183 (D.C. Cir. 1979); Church of Scientology of California v. Foley, 640 F.2d 1335 (D.C. Cir. 1981); see also Saffron v. Wilson, 481 F. Supp. 228 (D.D.C. 1979). In no instance has any court suggested that there was no limitations period.

In support of their contention, plaintiffs rely on Carlson v. Green, 446 U.S. 14 (1980), which held that a uniform federal rule of survivorship would be applied to actions against federal

*/ The Amended Complaint names as defendants thirty-nine present and former agents of the Federal Bureau of Investigation. Of these thirty-nine, five are deceased, nine have never been served with the summons and complaint, five were dismissed prior to September 16, 1981, and fifteen are subject to dismissal by plaintiffs' motion. There are also several defendants associated with the Metropolitan Police Department whose status is not affected by these pending motions.

officers for alleged constitutional deprivations. The Court found that application of state rules of survivorship would in some instances frustrate achievement of the goals of Bivens actions in that such actions could in certain states be barred. 446 U.S. at 25. Application of state rules of limitations of actions to Bivens actions does not frustrate the achievement of the goals of such actions. See, Johnson v. Railway Express Agency, 421 U.S. 454 (1975); Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 702 (1966). Although the limitations periods may differ from state to state, in no case would the right of action be denied, and the lack of absolute uniformity does not interfere with the goals of Bivens actions to recompense injured persons and to deter federal officers from committing unconstitutional acts. See Auto Workers, supra, 383 U.S. at 702. Moreover, the goals and purposes of statutes of limitations, as statutes of repose and to prevent stale claims, are not insignificant, and plaintiffs advance no reasons to justify why in Bivens actions these principles should be ignored.

Plaintiffs' second argument is that until April, 1976, when certain Senate committee reports were published, information sufficient to put them on notice that they had a cause of action had been fraudulently concealed from them. This contention suffers from two fundamental fallacies: (1) plaintiffs have not alleged or proved that any defendant fraudulently concealed a potential cause of action, and (2) the record of this action, including principally the testimony of the plaintiffs, demonstrates that by the Spring of 1972 plaintiffs had sufficient information to put them on notice of a potential cause of action.

The Amended Complaint, as well as the factual elucidation supplied by plaintiffs, demonstrates that this action was commenced more than three years after the events alleged to have caused injury. To avoid the time bar, therefore, plaintiffs must establish that the statute was tolled by the equitable principle of fraudulent concealment. Plaintiffs must prove that the defendants Brennan, Moore, Jones, Grimaldi, and Pangburn either had

a duty to disclose information to them or had taken affirmative action to conceal facts which, if known, would have alerted plaintiffs that a cause of action existed. Mere silence is not sufficient to toll the statute. Smith v. Nixon, 606 F.2d 1183 (D.C. Cir. 1979); General Aircraft Corp. v. Air America, Inc., 482 F. Supp. 3, 8 (D.D.C. 1979). Plaintiffs have not alleged or proved that these defendants had a duty to disclose or took affirmative acts to conceal.

Moreover, fraudulent concealment will toll the statute only so long as the concealment endures. Where the plaintiffs knew, or by the exercise of due diligence could have known, that they may have had a cause of action, the statute of limitation is not tolled. Fitzgerald v. Seamans, 384 F. Supp. 688 (D.D.C. 1974), affirmed, 553 F.2d 220 (D.C. Cir. 1977).

The exhibits attached to the motion by federal defendants for judgment on the pleadings and the testimony of plaintiffs demonstrate that by the Spring of 1972, more than four years prior to commencement of this action, plaintiffs had information, principally through the disclosures by former Special Agent Robert Wall, which alerted them to the existence of a potential cause of action. [See Memorandum In Support of Federal Defendants Motion For Judgment on the Pleadings, at 5-7]. Plaintiffs assert now that this information, including their personal observations, experiences, and suspicions, was not sufficient to file suit.*/ [See Plaintiffs' Opposition To Motions By Defendants, filed October 5, 1981, at 20]. It is of no moment, however, that plaintiffs lacked in 1972 the precise details to prove their claims. As the Court stated in Fitzgerald v. Seamans, 384 F. Supp. 688 (D.D.C. 1974):

> It would be anomalous indeed if under the modern Federal Rules of Civil Procedure, which provide for notice pleadings and liberal opportunities for discovery, a plaintiff could succeed in a claim of fraudulent concealment merely by alleging that the full "depth and scope of the conspiracy remained hidden" from him and "has not even to this day become fully known." [Citations omitted.]

*/ This assertion is made even though a component of the National Mobilization Committee in fact brought suit in 1970. See Fifth Avenue Peace Parade Committee v. Gray, 480 F.2d 326 (2nd Cir. 1973).

384 F. Supp. at 694. The plaintiffs clearly had information in 1972 which was sufficient to impose on them the duty to exercise due diligence to find the necessary facts for intelligent prosecution of their claims. The period of limitations, arguabl three years, is for the purpose of making such an inquiry, which could have been done, for example, by demands pursuant to the Freedom of Information Act, review of materials produced in other suits, personal interviews, or, as in this case, filing a complaint alleging a general cause of action and then sifting through massive discovery in an attempt to locate a cognizable claim. Plaintiffs have not demonstrated that by the exercise of due diligence they could not have discovered sufficient facts.

Plaintiffs' present claim that they did not have sufficient information until April, 1976, rings hollow. The claim suggests that the activities of the FBI were completely unknown and the revelations of the Church Committee sprang upon a complacent, unsuspecting public. Nothing could be further from the truth, as is demonstrated by, among other things, the large number of civil actions filed against the FBI prior to April, 1976.*/ Furthermore, it would seem that if the Church Commitee had been such an abundant source of information to the plaintiffs, they would have been able to formulate a complaint which did more than name defendants at random and made only general, categorical allegations. The record amply demonstrates that plaintiffs rested comfortably on their cause of action and filed their complaint after their claims were time barred.

II. Defendant Gerould Pangburn Is Entitled To Judgment on the Pleadings

Defendant Pangburn's motion for judgment on the pleadings is based essentially on these issues: (1) Plaintiffs fail, in the Amended Complaint and in their responses to discovery, to set

*/ E.g., Institute for Policy Studies v. John Mitchell, (D.D.C.) Civil Action No. 74-316; David Dellinger v. John Mitchell, (D.D.C.) Civil Action No. 1768-69; Jane Fonda v. Richard Nixon, (N.D. Cal.) Civil Action No. 73-2442; SWP v. Attorney General, (S.D.N.Y.) Civil Action No. 73-Civ-1360; ACLU v. City of Chicago, (N.D. Ill.) Civil Action No. 75-3295.

forth with particularity the nature of their claim against defendant Pangburn; (2) Plaintiffs fail to describe any act committed by defendant Pangburn which caused them injury or to link him with any misconduct; (3) Defendant Pangburn'Ps sworn testimony refutes the allegations of misconduct.

Plaintiffs' opposition to this motion contains eighteen pages of diatribe against the FBI; however, defendant Pangburn is not mentioned by name or by position. Not one act or event is described with which defendant Pangburn is alleged to have been connected.*/ Not one issue raised in defendant Pangburn's motion is addressed. In short, plaintiffs have not opposed defendant Pangburn's motion; he is therefore entitled to judgment in his favor.

Respectfully submitted,

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Assistant Attorney General

CHARLES F. C. RUFF
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Attorneys for federal defendants

*/ On the same date that plaintiffs filed their opposition to defendant Pangburn's motion, they abandoned their claims against fifteen other defendants. [See Plaintiffs' Motion For Leave To Voluntarily Dismiss Certain Federal Defendants, filed October 5, 1981.] Their opposition, however, reveals no distinction between defendant Pangburn and these fifteen against whom plaintiffs have elected not to proceed.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 76-1326
JERRY WILSON, et al.,	:	
Defendants.	:	

FILED
OCT 29 1981
JAMES E. DAVEY, CLERK

MEMORANDUM AND ORDER

Plaintiffs brought this action for damages and injunctive relief against a number of federal and District of Columbia law enforcement officials who, according to the amended complaint, systematically violated plaintiffs' civil rights while plaintiffs participated in lawful protest during the 1960's and 1970's against United States involvement in the Viet Nam War. With pretrial discovery nearly complete, the federal defendants have moved variously for dismissal of the complaint under Rule 8, Fed. R. Civ. P., and for judgment on the pleadings. All the federal defendants assert that the action is barred by a three-year statute of limitations. In addition, defendant Jones seeks dismissal of the complaint as to him because of allegedly excessive delay in effecting service of process. He and defendant Pangburn also seek dismissal for failure of plaintiffs to state the basis of plaintiffs' claim against them for their individual conduct. A number of other defendants had raised defenses similar to those of Jones and Pangburn and, as to those others, plaintiffs have sought leave for voluntary dismissal of the action. The District of Columbia, also a defendant in this action, appears not to participate in any of the present motions.

The grounds of the federal defendants' motions are substantially identical to those considered by Judge Pratt, to whom this case had been assigned earlier in its history. See Hobson v. Wilson, Civil Action No. 76-1326 (D.D.C., Nov. 9, 1979). In a memorandum of November 9, 1979, Judge Pratt refused to dismiss the complaint for failure to meet the standards of Rule 8, Fed. R. Civ. P. He also determined that, although a three-year

(N)

statute of limitations would apply to plaintiffs' claims, see D.C. Code § 301(8), the action should not be dismissed, because plaintiffs had suggested that defendants had fraudulently concealed information that would have made them aware of their rights of action during the three-year period after time began to run on their rights. Without making specific findings about those allegations of fraudulent concealment, the Court indicated that plaintiffs might well have lacked the "material facts" necessary for "intelligent prosecution" of their rights. See Emmet v. Eastern Dispensary & Casualty Hospital, supra, 130 U.S. App. D.C. 50, 56, 396 F.2d 931, 937; Hobson v. Wilson, supra, slip op. at 6. The Court stated, however, that defendants should have an opportunity to renew their motion for judgment on the pleadings later in the litigation if it subsequently appeared that plaintiffs had failed to prosecute their action without good cause.

In support of their present motion based on the statute of limitations, defendants argue that it is the law of this case that the longest statute of limitations applicable to the action is the three-year period established by 12 D.C. Code § 301(8). Defendants assert that because the complaint (later amended) that commenced this action was filed on July 16, 1976, and because no act is specifically alleged to have occurred after that date, the case should be dismissed. Plaintiffs, in their opposition to the defendants' motion, appear to concede that they allege no act giving rise to a cause of action after July 16, 1973. They argue, however, that the three-year statute of limitations should not apply to their constitutional cause of action against defendants, and that even if it did apply, the defendants concealed material facts that would have enabled them earlier to commence the action. Plaintiffs thus ask the Court to revise the decision of November 9, 1979, concerning the applicability of the statute of limitations and, in the alternative, to invoke the equitable doctrine of fraudulent or deliberate concealment. The developments in the law governing use of local procedure rules in direct constitutional actions since this Court's decision in November 1979, perhaps highlighted by Carlson v. Green, 446 U.S. 14

(1980), do not, however, permit the Court to reconsider the 1979 decision that 12 D.C. Code § 301(8) applies to this case. Certainly, Carlson v. Green is not itself authority, as plaintiffs argue, for avoiding local statutes of limitation in direct constitutional actions. The issue thus becomes whether the Court should, upon examination of the present record, find that plaintiffs are entitled to the benefit of the equitable doctrine the Court applied pro tempore in November 1979.

Plaintiffs bear the burden of proving their right to toll the statute of limitations because of alleged fraudulent or deliberate concealment. Emmett v. Eastern Dispensary & Casualty Hospital, supra, 130 U.S. App. D.C. at 56-57, 396 F.2d at 938-39. Our Court of Appeals has established principles governing the application of that doctrine to public actions involving allegations of covert official wrongdoing. See, e.g., Smith v. Nixon, 196 U.S. App. D.C. 276, 606 F.2d 1183 (1979); Fitzgerald v. Seamans, 180 U.S. App. D.C. 75, 553 F.2d 220 (1977). It is unclear from the record in this case whether Judge Pratt's November 1979 ruling on the motion to dismiss dealt with the depositions of plaintiffs Tina Hobson and David Eaton concerning their knowledge of official misconduct directed at them during the 1960's and 1970's. See Eaton deposition at 14-15 (filed Dec. 12, 1978); T. Hobson deposition at 9-11 (filed Jan. 17, 1979). Similarly, it is unclear whether Judge Pratt had before him in 1979 the magazine and newspaper articles the government now offers as evidence that plaintiffs might, through "due diligence," see Fitzgerald v. Seamans, supra, 180 U.S. App. D.C. at 83, 553 F.2d at 228, have discovered the facts that could have been the basis of a claim well before the statute had run. Even if this Court should deem all those materials to have been before the Court in November 1979, however, it is clear that Judge Pratt did intend his decision to preclude a motion to dismiss turning on the applicability of the doctrine of fraudulent or deliberate concealment, after fuller development of the facts and issues in pretrial proceedings. See Hobson v. Wilson, supra, slip op. at 6.

Pretrial is now virtually complete. The eve of trial is the appropriate moment in this case to resolve the facts on the fraudulent concealment question. See Fitzgerald v. Seamans, supra, 180 U.S. App. D.C. at 84, 553 F.2d at 229. While plaintiffs must prove their entitlement to equitable relief from the statute of limitations, the decision in Fitzgerald v. Seamans, supra, appears to contemplate an opportunity for the taking of evidence on the issues of "due diligence" and prior knowledge of a right of action before summary judgment, or judgment on the pleadings, could be granted in a case like the present one. See id.; see also Smith v. Nixon, supra, 196 U.S. App. D.C. at 283, 606 F.2d at 1190. This Court cannot say that the plaintiffs have now proven an entitlement to relief from the statute of limitations; but similarly, there remain material questions about the ability of plaintiffs to have commenced action prior to the issuance of the report of the Ninety-Fourth Congress' Senate Select Committee To Study Governmental Operations With Respect To Intelligence Activities in 1976. While the references to the Hobson and Eaton depositions raise unresolved questions about plaintiffs' knowledge of their rights of action, plaintiffs must have adequate opportunity to carry the burden that the doctrine of fraudulent or deliberate concealment imposes on them.

An accompanying order therefore directs the parties to file papers to assist the Court in determining whether it can, on the basis of the present record, reach and decide the issues raised by plaintiffs' claim of fraudulent or deliberate concealment, particularly in light of Fitzgerald v. Seamans, supra, 180 U.S. App. D.C. at 84, 553 F.2d at 229. In addition to assembling all the present evidence pertinent to plaintiffs' claim, the papers should discuss whether the knowledge plaintiffs did have of official misconduct bars some, if not all, of their substantive claims, and whether that knowledge placed them under an obligation to investigate sua sponte what they knew, or suspected, about government interference with their activities. See Smith v. Nixon, supra, 196 U.S. App. D.C. at 284, 606 F.2d at 1191. The parties should also discuss whether a plaintiff's

knowledge, or the obligations of "due diligence" attributable to one plaintiff, should affect the entitlement of other plaintiffs to go forward even if the knowledgeable plaintiff must be dismissed from the action. Moreover, the parties should address the difficult questions raised if it appears that the plaintiffs had some knowledge of wrongdoing, but no knowledge of the particular individuals, or specific governmental organizations that were responsible for it. See Fitzgerald v. Seamans, supra. Finally, the parties should discuss whether, if the present record does not permit resolution of this matter, the remaining factual issues deriving from the claim of fraudulent or deliberate concealment should be determined by the Court or by a jury. In the event factual questions remain, the Court will wish to try them before or as the first phase of trial on the merits, either to the Court or to a jury. The briefing schedule established by the accompanying Order will permit the Court to examine plaintiffs' claim to the benefit of the doctrine of fraudulent or deliberate concealment at the time of the pretrial conference.

The discrete defenses raised by defendants Jones and Pangburn are more simply resolved. Neither defendant is entitled to dismissal of the complaint as to him for failure to state adequately the claim against him. Such a defense has already been considered and rejected by the Court in its November 1979 decision. See Hobson v. Wilson, supra, slip op. at 3-4. Jones' suggestion that the claims against him should be dismissed for failure to serve process in a timely fashion must also be rejected, inasmuch as he will suffer no prejudice if plaintiffs are precluded from raising any claim against him not stemming from acts already involved in the litigation against other defendants who are represented by Jones' counsel, and who were with Jones in the Federal Bureau of Investigation at the time of his allegedly unlawful conduct. Counsel for Jones is invited to submit with his pretrial brief an appropriate order concerning the claims to be precluded.

Accordingly, it is this 29th day of October 1981 hereby

ORDERED: That the motions to dismiss filed by defen-

dants Jones and Pangburn are denied, except insofar as the motions seek dismissal or judgment on the pleadings for failure of plaintiffs to commence action within the time period required by the statute of limitations; and it is further

ORDERED: That on or before November 5, 1981, plaintiffs shall file a memorandum, to be accompanied by exhibits if necessary, indicating the basis of their claim to the benefit of the doctrine of fraudulent or deliberate concealment in the present record, and their position as to whether any factual issue raised is for decision by the Court or by a jury; and it is further

ORDERED: That defendant shall file a response to plaintiff's memorandum within seven days of the time of plaintiffs' filing, and in no event later than November 12, 1981; and it is further

ORDERED: That any evidentiary hearing required to resolve any disputed questions of fact will commence November 23, 1981, either with or without a jury.

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

11/12/81

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al.,	)	
Defendants.	)	

MEMORANDUM BY FEDERAL DEFENDANTS IN OPPOSITION TO PLAINTIFFS' "MOTION FOR RECONSIDERATION" AND IN RESPONSE TO THE COURT'S ORDER OF OCTOBER 29, 1981

By Memorandum and Order filed on October 29, 1981, this Court directed the parties to address various specific questions related to the issues of fraudulent concealment and the statute of limitations. Plaintiffs responded to this direction by moving for reconsideration of this Court's Orders of November 9, 1979, and October 29, 1981.*/ Specifically, plaintiffs request this Court to declare that no statute of limitations is applicable to this civil action. In addition, plaintiffs argue that it was not until the publication of the Final Report of the Senate Select Committee To Study Governmental Operations with Respect To Intelligence Activities, April, 1976, "that the material facts concerning plaintiffs' claims were revealed."**/

These arguments are legally and factually without basis.

I. The District of Columbia Statute of Limitations Is Applicable To This Action

The law of this Circuit is that the District of Columbia statute of limitations is applicable to actions against federal officers for alleged violation of constitutional rights, for which actions there is no federal statute of limitations. Fitzgerald v. Seamans, 553 F.2d 220 (D.C. Cir. 1977); Smith v. Nixon, 606 F.2d 1183 (D.C. Cir. 1979); Church of Scientology of California v.

*/ The Orders of November 9, 1979, and October 29, 1981, were denials of motions by federal defendants to dismiss and for judgment on the pleadings. Federal defendants do not object to reconsideration of the denial of their motions, but it is doubtful that that is the salutary end to which plaintiffs truly strive.

**/ Plaintiffs' Memorandum In Response To Order Dated October 29, 1981, at page 11.

Foley, 640 F.2d 1335 (D.C. Cir. 1981). This rule is precisely consistent with the holdings of Johnson v. Railway Express Agency, 421 U.S. 454 (1975), and Board of Regents v. Tomanio, 446 U.S. 478 (1980).

Plaintiffs have presented no argument that would justify ignoring the profound policies underlying statutes of limitations:

> Statutes of limitations, which "are found and approved in all systems of enlightened jurisprudence," represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that "the right to be free of stale claims in time comes to prevail over the right to prosecute them." These enactments are statutes of repose; and although affording plaintiffs what the legislature deems a reasonable time to present their claims, they protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise . . . . We should regard the plea of limitations as a "meritorious defense, in itself serving a public interest."

United States v. Kubrick, 444 U.S. 111, 117 (1979) (citations omitted).

II. This Action Is Barred

In defending against the assertion that this action is barred by the statute of limitations, plaintiffs have contended that "[i]t was not until the Church Committee reports were published in April 1976 that the material facts concerning plaintiffs' claims were revealed." (Plaintiffs' Memorandum, at 11.)

The first flaw in this statement is that it does not correctly state the legal standard applicable to the issue of when a concealment of a cause of action ends. As stated in Fitzgerald v. Seamans, 384 F. Supp. 688, 693-94 (D.D.C. 1974), a potential plaintiff is not entitled to wait passively until all material facts have been presented to him before he is required to move into action. In other words, the limitations period begins to run, and the concomitant obligations to proceed toward commencing an action arise, when the potential plaintiff has reasonable

notice of, or by due diligence should have known, facts and actions which may constitute a cause of action.*/

The second flaw in plaintiffs' contention is its demonstrable falseness. If it were true that the publication of the Church Committee Report in April, 1976, was the occasion upon which plaintiffs first obtained the information leading them to believe they had claims justifying commencement of this civil action, then the following propositions would reasonably be expected to be true:

1. Plaintiffs' attorneys would have begun only after April, 1976, to prepare for commencement of this civil action.

2. The individual plaintiffs, in their responses to discovery, would have identified the publication of the Report as the principal, if not the sole, impetus for filing suit.

3. The Complaint, or the initial responses to discovery, would have contained details gleaned from the Report deemed material to the causes of action, such as the actions complained of, the injuries suffered, and the identities of the defendants.

4. Few, if any, of the principal claims made by plaintiffs would have been based on information not contained in the Church Committee Report.

Taking each of the foregoing propositions in order, it is evident that each and every one is false:

1. Attorneys David Rein and Anne Pilsbury had begun by at least October, 1975, to gather materials for the commencement of an action against the Federal Bureau of Investigation and the Metropolitan Police Department for alleged break-ins, wiretaps, planting informants, and surveillance. The October-November, 1975, issue of the Washington Peace Center Newsletter (Exhibit A) states, "Attorney David Rein has volunteered his help in suing for damages in the break-ins and other illegal police state activities

*/ The concept of "discovery and due diligence" as described in Fitzgerald v. Seamans, supra, assumes a concealment. In this case, plaintiffs have shown no legal or fiduciary obligation of defendants to disclose facts to plaintiffs, nor have they alleged any overt or affirmative acts of concealment. Plaintiffs have alleged concealment; however, mere silence is not concealment which tolls the running of the limitations period. General Aircraft Corp. v. Air America, Inc., 482 F. Supp. 3, 8 (D.D.C. 1979).

that occured (sic) during the height of the Peace Movement."*/ In other words, the decision to commence this action was made at least six months prior to the publication of the Church Committee Report in April, 1976.

2. In his answer to the first set of interrogatories by the federal defendants,**/ plaintiff Julius Hobson listed the Church Committee Report as one of several documents and publications which led him to believe that he had been the subject of FBI surveillance. The other plaintiffs, in their responses to the same set of interrogatories, incorporated this response by reference. Not one plaintiff, however, described a single event or category of activity which they claimed to have discovered in the Church Committee materials. In addition, each of the plaintiffs was asked at deposition when filing suit was first considered.***/ Not one plaintiff mentioned the Church Committee Report as playing any role in the considerations.

3. (a) When the original Complaint was filed, eleven FBI defendants were named. Only two of these had been mentioned in the Church Committee Report, viz., William C. Sullivan and Charles D. Brennan. Even as to them, no specific act or activity, apart from the general subject of COINTELPRO-New Left, was mentioned in the Complaint. In responding to federal defendants' initial rounds of discovery, no plaintiff referred to the Church Committee Report as the basis for the claims against defendants Brennan and Sullivan.

(b) Plaintiffs have stated in their Pretrial Brief, Facts To Be Proven, that defendant George C. Moore participated in efforts to disrupt the Poor People's Campaign, which efforts

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*/ This document was produced by plaintiff Washington Peace Center's Supplemental Response to Federal Defendants' Second Request for Production of Documents, served April 21, 1978.

**/ See Answers filed October, 1976. Mr. Hobson's response was no more specific than stating that the Church Committee Report disclosed that various peace organizations and the Poor People's Campaign had been the subject of surveillance by the FBI.

***/ See deposition transcripts of plaintiffs as follows: Abbott, at 5; Bloom, at 5; Booker, at 13; Eaton, at 12-16; Hobson, at 9-10; Pollock, at 16; Waskow, at 5.

plaintiff Eaton claims injured him because he was involved in planning the Poor People's Campaign. (See Plaintiffs' Pretrial Brief, at 16-17.) This charge is based on FBI documents published by the Church Committee in Vol. 6 of its Hearings, a publication included in plaintiff Julius Hobson's list. (See Hearings, Vol. 6, at 767-780.) Defendant Moore's name appears on each document as the recommending official; however, George C. Moore was not named as a defendant in the original complaint. Furthermore, he was named as a defendant in the Amended Complaint only because he had been identified in federal defendants' answers to interrogatories as having been responsible for the supervision of the Key Extremist and Key Black Extremist programs.*/ He was made a defendant for reasons having nothing to do with the alleged effort to disrupt the Poor People's Campaign, and the issue of this allegation did not arise in this litigation until early in 1981.

(c) In addition to the issue of the Poor People's Campaign, plaintiffs' Pretrial Brief alleges the following specific acts which are referred to in the Church Committee Report:

> (i) Defendant Brennan directed poison pen letter efforts to ridicule the inauguration demonstrations and the NMC.
>
> (ii) Defendant Brennan directed poison pen letter efforts to sow division and tension among members of the NMC Steering Committee, which included plaintiffs Waskow and Bloom.

See Plaintiffs' Pretrial Brief, at 17. Even though the particular events referred to here were described in the Church Committee Report, plaintiffs did not introduce them as issues in this action until October 22, 1981, the day the Pretrial Brief was filed.**/

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*/ Response By Defendants Kelley And Stames, In Their Official Capacities, To Plaintiffs' First Set of Interrogatories, December 8, 1976, Interrogatory No. 6.

**/ See Motion By Federal Defendants To Strike Portions of Plaintiffs' Pretrial Brief, and attached exhibits, filed November 3, 1981.

(d) Except for the matters referred to in (b) and (c), above, there is no specific act or event described in Plaintiffs' Pretrial Brief which is described in the Church Committee Report.

4. Plaintiffs' responses to discovery show that the allegations of electronic surveillance, break-ins, use of informants by the FBI, physical surveillance, and investigation of political activities are not based on the Church Committee Report. Furthermore, specific matters about which plaintiffs complain are not mentioned in the Church Committee Report. These include the publication of the anonymous newsletter The Rational Observer, the alleged interference with radio communications at the 1969 Inauguration demonstrations, the alleged abuse of housing forms at the 1969 Inauguration demonstrations, and the alleged effort to exploit the "head-tax" dispute between the Black United Front and the National Mobilization Committee.

As the foregoing discussion demonstrates, the publication of the Church Committee Report in April, 1976, was not the occasion on which plaintiffs discovered they had a potential cause of action. In fact, the contents of the Report appear to have been insignificant to this litigation until the beginning of 1981 when plaintiffs began using it for purposes of framing discovery demands. The relevant inquiry becomes, therefore, whether some other event or series of events occurred after July 16, 1973, which, first put plaintiffs on notice that they had a potential cause of action. Plaintiffs have not suggested any such event; however, the facts, documents, and testimony which federal defendants have submitted or referred to in support of their motion for judgment on the pleadings*/ demonstrate that plaintiffs had sufficient information prior to July 16, 1973, to put them on notice of a cause of action. Plaintiffs have no credible defense against the statute of limitations and the action is barred.

*/ See also Defendant Terry O'Connor's Motion For Judgment On The Pleadings.

III. Plaintiffs' Specific Arguments Do Not Demonstrate That The Bar of Limitations Is Avoided In This Action

The foregoing having been said, a few final points must be addressed.

1. Plaintiffs observe that some of their allegations have not led to assertable claims. (Plaintiffs' Memorandum, at 21 fn. 10.) Whatever point plaintiffs are trying to make, it is irrelevant to the application of the statute of limitations. The bar of limitations applies even if a claim is otherwise meritorious, see United States v. Kubrick, 444 U.S. 111 (1979); conversely, the fact that plaintiffs have brought an ultimately unmeritorious cause of action should not protect them from the effects of the statute.

2. Plaintiffs state that they discovered certain acts and events only after they filed suit. (E.g., Plaintiffs' Memorandum, at 22.) This circumstance does not protect the action from being barred. Fitzgerald v. Seamans, 384 F. Supp. 688 (D.D.C. 1974), clearly holds that not all facts need be known prior to commencement of the action, for the finding of facts is the function of notice pleading and liberal discovery. With respect to the application of limitations, the issue is when did plaintiffs know, or by due diligence should have known, of the existence of a potential cause of action. The later discovery of additional details does not alter that issue.

3. Plaintiffs state that prior to acquiring knowledge of certain "material facts" they had only vague suspicions and to have initiated a suit on such a basis would have led to dismissal of the action. (Plaintiffs' Memorandum, at 21.) This contention is hypothetical and unamenable to exact analysis; however, the so-called "material facts" described by plaintiffs are legal questions*/ and

*/ Plaintiffs' Memorandum, at 21, states:

> The material facts needed to establish a claim of illegal surveillance include (1) that the surveillance was conducted for the purpose of suppressing constitutional rights; (2) that it was conducted for a purpose unauthorized by statute or executive order; (3) that the surveillance employed intrusive techniques or intrusions into private meetings; and/or (4) that the scope, intensity, or duration of the surveillance exceeded that necessary to the accomplishment of any legitimate law enforcement purpose.

have nothing to do with plaintiffs' knowledge or suspicions of the facts of surveillance, break-ins, use of informants, or the other elements of their claims. Furthermore, whether an earlier suit would have been dismissed is an issue of the merits of the claim and is irrelevant to the application of limitations.

4. Plaintiffs assert that the "head-tax" controversy is not barred, even though the matter is unambiguously referred to in articles published in 1972 by former Special Agent Robert Wall, and four of the plaintiffs admit that they read the articles or, in the case of plaintiff Waskow, spoke with Robert Wall in 1971 and 1972.*/ They somehow assert that plaintiff Waskow was not aware of Wall's disclosure regarding the "head-tax" issue. This assertion has no factual support and is, in any event, irrelevant, since plaintiff Waskow could have failed to know about the issue only by intentionally avoiding it. In addition, plaintiffs assert that the information from Wall was insufficient for intelligent investigation and prosecution because Defendant Webster's Response to Plaintiff's Tenth Set of Interrogatories, Response No. 1, filed March 9, 1981, did not confirm one particular detail of Wall's rendition of the event. Wall had claimed that a letter regarding the "head-tax" issue was sent by the FBI, anonymously, to certain persons involved in the controversy. The files of the FBI do not confirm this allegation; however, on the basis of the Wall allegation, plaintiffs have alleged wrongdoing by the federal defendants, they have obtained documents relating to the "head-tax" issue and the FBI's discussion of it, and they have pursued the cause of action. The fact that Robert Wall's description was incomplete and not entirely accurate does not mean that plaintiffs were not put on notice of a potential cause of action, and, in fact, plaintiffs admit that the information provided by Wall in 1972 was the very basis for filing suit in 1976.

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*/ See exhibits attached to Federal Defendants' Motion for Judgment on the Pleadings and depositions of plaintiffs: Bloom, at 36-41; Abbott, at 7; Booker, at 32-33; Waskow, at 26.

5. Plaintiffs aver that one type of overt, as opposed to concealed, act occurred, viz., interviews conducted for the purpose of intimidation.*/ They contend, however, that this act did not become actionable until they discovered the underlying illicit motive. Although intimidation would normally be immediately apparent to the victim, plaintiffs claim that they did not realize the intimidation until several years later. To put it charitably, this assertion lacks credibility.

6. Finally, plaintiffs frequently state that until the Freedom of Information Act was amended in 1974 they did not have the tools to discover the facts material to their claims. (Plaintiffs' Memorandum, at 20-21.) The Freedom of Information Act was, of course, enacted in 1967,**/ and nothing prevented them from making a request. In fact, plaintiff Waskow did make a request in 1971. (The letter to the Justice Department from his attorneys includes the charge that he was being investigated because of his political activities. See Exhibit B.) Furthermore, nothing prevented them from commencing a civil action in 1973, alleging several categories of activities, contending the information was uniquely under the control of the defendants, and undertaking broad discovery to attempt to find a cause of action. Plaintiffs simply chose to wait until July 16, 1976, to commence such an action.

Conclusion

This action should be dismissed in that it is barred by the applicable statute of limitations.

Respectfully submitted,

J. PAUL McGRATH
Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

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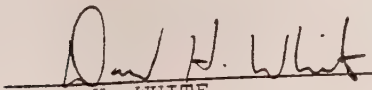
*/ The Amended Complaint contains no allegations of interviews for purposes of intimidation. The Plaintiffs' Pretrial Brief was the first occasion that this kind of act was stated to be a cause of action. The Pretrial Brief does not describe or identify a single occasion in which a defendant conducted an interview for purposes of intimidation.

**/ 5 U.S.C. § 552; Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 383; Pub. L. 90-23, 1, June 5, 1967, 81 Stat. 54.

BROOK HEDGE



DAVID H. WHITE

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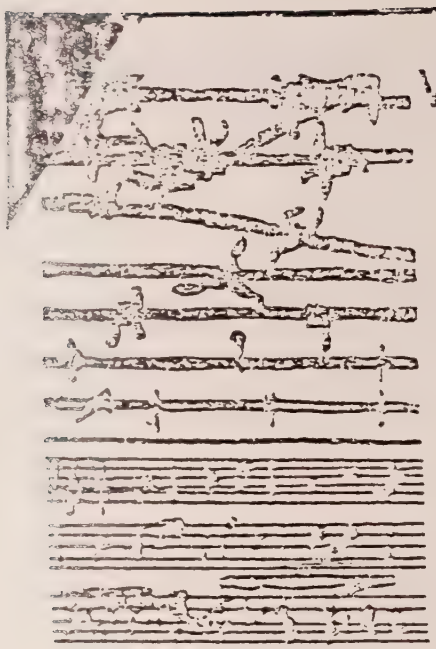
Attorneys for Federal Defendants



WASHINGTON PEACE CENTER NEWSLETTER

OCTOBER-NOVEMBER 1975

2111 Florida Avenue N.W. Washington, Columbia 20008
Enter on Decatur Place (202) [illegible]

Action Planned On Break ins

Attorney David Rein has volunteered his help in suing for damages in the break ins and other illegal police state activities that occured during the height of the Peace Movement. Anne Pilsbury and other members of the D.C. Committee for the Bill of Rights will aid in the effort. Suspected victims include: Community Book Store, Washington Peace Action Council, Women's Strike for Peace, E.T.T.C., Black United Front and a number of individuals who suspect they may have been subject to wiretaps or who had their homes broken into. Many organizations will charge police with planting informants that encouraged acts (some violent) that the organizations did not want. If you think you (or your organization) was a victim of police or federal survailance, wiretapping, break ins, subversion etc. call David Rein at 628-4047 or Anne Pilsbury 628-4195 (days) or 543-4435 (nites). Its important many groups and people participate so that a strong case can be made. A fund raiser party will be held for the D.C. Committee for the Bill of Rights at the Echevarria's 2706 Olive Street in Georgetown Saturday November 1st at 8:00 P.M.

9 ORGANIZATIONS WALK FOR PEAC

American Friends Service Committee, War [illegible] Sisters League, Catholic Peace Fellowship, Catholic Worker, Clergy & Laity Concerned, Fellowship of Reconciliation, Sane, Women Strike for Peace and Women's International League for Peace & Freedom have formed The Continental Walk for Disarmament and Peace to push for unilateral action toward disarmament in order to help create a more decent and just society and to encourage cooperation among people working for peace, social change and sexual, racial and economic justice.

The walk should arrive here (it starts in San Francisco and ends in Washington) at [illegible]

(con't on pg 3)

Civil Action No. 76-1326 Exhibit A

AMERICAN CIVIL LIBERTIES UNION

156 Fifth Avenue New York, N.Y. 10010 (212) 675-5990

October 29, 1971

RECEIVED
NOV 3 1971
Correspondence Control Unit
Internal Security Division

Hon. John N. Mitchell
Attorney General of the United States
Department of Justice
Washington, D.C.

Dear Sir:

We have been retained by Dr. Arthur I. Waskow, Resident Fellow of the Institute for Policy Studies, Washington, D.C., to obtain a file concerning him which has been prepared and is being maintained by the Internal Security Division of the Department of Justice.

Dr. Waskow believes that the Internal Security Division has collected, maintained and disseminated information concerning him solely because of his constitutionally protected activities as a well known opponent of the war being waged in Southeast Asia by the government of the United States. He has expressed his opposition to that war in a large number of publications, public statements and public speeches, all of which are activities protected by the First Amendment.

The records in the possession of the Internal Security Division pertaining to Dr. Waskow are clearly identifiable, within the meaning of Title 5, United States Code, Section 552(a)(3), and accordingly should be made promptly available to him. An example of the information contained in Dr. Waskow's file appears in a Department of Justice memorandum prepared some time prior to November 15, 1969. The memorandum was prepared ostensibly to assess "the potential for violence during the week-end of November 13-15 in Washington, D.C. in connection with the activities planned by the New Mobilization Committee to End the War in Vietnam." The memorandum contains the following paragraph about Dr. Waskow, a member of the New Mobilization steering committee:

146-200-38627
DEPARTMENT OF JUSTICE
26 NOV 3 1971

Edward J. Ennis, Chairman, Board of Directors • Ramsey Clark, Chairman, National Advisory Council
Aryeh Neier, Executive Director Legal Department: Melvin L. Wulf, Legal Director • Sanford Jay Rosen, Assistant Legal Director • Staff Counsel: Joel Gora • Lawrence Sager • Marilyn Holt • Michele Hermann

Civil Action
No. 76-1326
Exhibit B

> "Arthur Waskow is a Trustee and Resident Fellow of the Institute for Policy Studies in Washington, D.C. The Institute opposes the Vietnam war, the draft, the military community and supports the programs of the New Left and black extremists. Waskow himself advocates "creative disorder." In 1962 in Washington he met with a Russian intelligence officer attached to the Soviet Embassy, and in Switzerland with an official of the Polish Embassy." [Emphasis added.]

Dr. Waskow maintains that the statement that "[i]n 1962 in Washington he met with a Russian intelligence officer attached to the Soviet Embassy, and in Switzerland with an official of the Polish Embassy," is false. Since the maintenance and dissemination of such erroneous information by the Internal Security Division is extremely damaging to the reputation and security of our client, I hereby formally request, pursuant to Title 5, U.S.C., Section 552(a)(3), that you make promptly available to Dr. Waskow all dossiers, reports and information maintained by the Internal Security Division concerning his private, public and professional life so that he may review all such information.

I urge your prompt compliance with this formal request in accordance with the terms of Section 552(a)(3).

Yours sincerely,

Melvin L. Wulf
Legal Director

Ralph J. Temple
Ralph J. Temple
Legal Director
American Civil Liberties Union Fund

MLW:bg

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., :

[illegible]

v. : Civil Action No. [illegible]

[illegible], et al., :

Defendants :

RESPONSE OF THE DISTRICT OF COLUMBIA DEFENDANTS TO PLAINTIFFS' MEMORANDUM REGARDING FRAUDULENT CONCEALMENT.

On October 29, 1981 this court issued a memorandum order directing the parties inter alia, to brief the question of whether plaintiffs are entitled to the benefit of the doctrine fraudulent or deliberate concealment in order to suspend the running of the statute of limitations. While the District of Columbia defendants did not formally join in the motion filed by the federal defendants regarding the statute of limitations, the District of Columbia defendants did raise a statute of limitations defense in their answers to the complaint and in their pretrial brief. Since the statute of limitations argument made by the federal defendants applies indirectly to the District of Columbia defendants, it is appropriate for these defendants to respond to plaintiffs' recently filed memorandum on the question.

The acts in which the plaintiffs have based their suit occurred in the years 1968 to 1971. Plaintiffs filed this suit on July 16, 1976, and it alleges no specific acts committed by the defendants subsequent to 1971. Since there is no federal statute of limitations to the alleged acts committed by the defendants, it has been held that the local statute must [illegible]. Accordingly, this court has held that the three year period [illegible] to this action. Thus, absent some tolling of the statute, plaintiffs' suit must be barred by the statute of limitation

since the filing date is more than three years after the last alleged act committed by the defendants.

In this regard, plaintiffs assert that they are entitled to the benefit of the doctrine of fraudulent or deliberate concealment, which would suspend the running of the limitations period, thereby allowing them to maintain this suit. The United States Court of Appeals for the District of Columbia has established principles governing the application of this doctrine for actions involving alleged covert governmental wrongdoing. In Fitzgerald v. Seamans, 180 U.S. App. D.C.75,83 553 F2d 220, 228 (1977) that Court stated

> -----in the case of defendant's fraud or deliberate concealment of material facts relating to his wrongdoing, time does not begin to run until plaintiff discovers, or by reasonable diligence could have discovered, the basis of the lawsuit.

See also Smith v. Nixon, 196 U.S. App. D.C. 276, 606 F2d 1183 (1979).

To avail themselves of this doctrine, plaintiffs must plead and establish three elements: (1) wrongful concealment by the party asserting the statute of limitations defense, (2) plaintiff's failure to discover the operative facts forming the basis of his cause of action during the limitations period, and that this failure to discover occur. (3) despite the exercise of due diligence. General Aircraft Corp. v. Air America,482 F. Supp. 3,8 (D.D.C. 1979). citing Charlotte Telecasters, Inc. v. Jefferson Pilot Corp. 546 F2d 570, 574 (4thcir. 1976), Davco Corp. v. Goodyear Tire & Rubber Co. 523 F2d 389, 394 (6thcir. 1975).

Perforce, the second and third elements are im material until and unless the plaintiff establish fraudulent or deliberate concealment. As stated in [illegible] v. [illegible] Resorts, Inc. 379 F. Supp. 165, 169-170 (W. D. Va. 1974.

> ---Mere ignorance or lack of knowledge on the part of the plaintiffs is not sufficient to suspend the operation of the statute.
> ---There would of neccessity have to have been defendants, designed to conceal the existence of liability and to engage in some [illegible] of the suit. Mere silence by defendants absent any fraudulent acts or representations, is not such concealment as would prevent runaway of the statute.

See also General Aircraft Corp. v. Air America, supra, Public Service Co. of New Mexico v. General Electric Co. 315 F2d 306 (10th Cir. 1963). Cert. denied 374 U.S. 809, 835. Ct. 1695, 10 L. Ed 2d 1033 (1963); Peck v. United States, 470 F. Supp. 1003 (S.D. N.Y. 1973.)

Peck supra, is particularly instructive because it involves allegations of violations of plaintiff's constitutional rights based on federal agents' alleged failure to interfere in a conspiracy between local law enforcement officials and vigilantes despite knowing of the conspiracy through the use of informants. The court in Peck, citing Fitzgerald v. Seamans supra, held that the "due diligence discovery" rule is applicable only where the United States has deliberately concealed its acts so as to prevent plaintiff from becoming aware of their existence. But see Hammond v. United States, 388 F. Supp. 928 (E.D. N.Y. 1955)

Plaintiff's seek to invoke the due diligence discovery rule by asserting that covert governmental actions are per se fraudulent or deliberate concealment, i.e., that the vary nature of the defendants acts entitled them to claim the benefit of the "due diligence-discovery "rule. Examination of the cases involving covert governmental action reveals that more is needed.

[1]Although the "due diligence-discovery" rule may also be applied where plaintiff can show that its injury was "inherently unknowable" during the running of the statute, plaintiffs do [illegible] States, 304 F2d 234 (10th Cir. 1962).

In Peck, supra, plaintiffs alleged that the concealment was supported by a document that other defendants had instructed the informant to lie about his participation in alleged misconduct. Further, the Untied States had sought an injunction based upon the events in questions, but did not reveal its role or the role of the individual defendants, or that of the informant. Additionally, plaintiffs in Peck asserted that the informant had perjured himself and that the other defendants did not speak out. Even these allegations were found by the court to be insufficient to constitute [illegible] concealment, legally or factually. Peck supra at p. 1018,1019. The court, however, did not dismiss the action because it was possible that additional facts could be elicited to support the assertion of concealment through later discovery.

In [illegible] v. [illegible], supra, [illegible] wire tap which the court found to be, "by nature secret". The court also found that extraordinary efforts were undertaken to conceal the surveilance program. The court noted, in footnote 44:

> Appellants charge fraudulent concealment in appellees failure to inform Justice Department officials of the existence of the wire tap records, which were relevant to the criminal prosecution in United States v. [illegible] in the incorrect denial of 1973 press reports of the wiretapping program. Such affirmative acts according to Fitzgerald v. Seamans, supra ante 40, 180 U.S. App. D.C. at 83, 553 F2d at 228, would provide the "aggravation" needed to bring this case within the traditional view that the statute of limitations is tolled when there has been fraudulent concealment of the injury that would serve as the basis for legal actions. See Holmberg v. Armbrecht, 327 U.S. 392,396-397, 66 S. Ct. 582, 90 L. Ed. 743 (1946) (Emphasis added)

It was on that basis that the court reversed the dismissal and held that plaintiffs had alleged sufficient affirmative [illegible] discovery rule.

In Fitzgerald v. Seamans, supra, the court [illegible] the due diligence-discovery rule, stating at page 228.

> We think it appropriate to apply the discovery diligence standard to this case where appelent alleges there was a conpiracy to terminate his government service in retaliation for his congressional testimony and to conceal this by making false accusations to be smirch his reputation by perpertrating the termination in the guise of a reduction inforce. In the particular case, there is the "aggravation" that appellant has been impeded in exploring the circumstances of his dismissal and its after math by invocation of governmental secrecy ---and the invocation of executive privilege----

Plaintiffs assert in their complaint that the D.C. defendants attempted to conceal their wrong doing by destroying the files maintained by the Intelligence Division of the Metropolitan Police Department. Plaintiffs argue, as they must, that said destruction constitutes fraudulent or deliberate concealment of material facts. Such an assertion is unavailing for several reasons.

Factually, the destruction of files was part of an ongoing and routine weeding out of redundant and out dated material, which stemmed in part from a reorganization of the Intelligence Division. This weeding out process began, at the earliest, in March or April of 1974 and continued until 1975. (Answer of Defendants District of Columbia, Zink and Zanders to Plaintiffs Interrogatories. Answer 3. See also Transcript of Deposition of Robert L. Zink, pp. 6,11,12.) There is no competent evidence to ascribe any improper motive to the throwing away of old files. Accordingly, the mere assertion or suspicion that the purging of Intelligence Division files was done for purposes of concealing information can not support a conclusion that this weeding out process was a fraudulent or deliberate act designed to frustrate plaintiffs'ability to gain information.

See Beck, supra at p. 1019. If government agencies did not go through this normal process of throwing away outdated materials, there would soon be no room for anything but useless files.

Even assuming, the throwing away of old files was done to conceal information, the statute of limitaitons would not be tolled in the case at bar because this weeding out process began more than three years after the date of the last significant act of wrongdoing allegedly commited by the District of Columbia Defendants against the named plaintiffs. Although Plaintiffs allege that the relevant period in this action was 1967 to 1974, plaintiffs can point to no specfic act by the District defendants subsequent to 1971. For example the entry into 1029 Vermont Avenue, N.W. allegedly took place in about May of 1970. The three year statute therefore expired in May of 1973, well before the throwing away of any arguably relevant police files.

In the case at bar. the record is devoid of any other affiemative acts by the District defendants which could serve as the "agggavation" explicitly required for tolling of the statute of limitation in cases of alleged covert governmental misconduct. To allow plaintiffs to invoke the discovery diligence standard based merely upon their suspicion of governmental misconduct would dramatically alter that doctrine and would open a Pandora's box of stale claims.

Nevertheless, even if plaintiffs could satisfy the first criterion of the three-pronged test for application of the discovery-diligence doctrine (i.e. even if they could establish deliberate or fraudulent concealment the statute of limitations would not be tolled since a number of plaintiffs were aware of surveillance activities more than three years before they filed the instant lawsuit. (e.g. Plaintiffs Dooker and Abbott knew that defendant Bynum was an MPD DC undercover officer. Thus, plaintiffs cannot claim that, despite due diligence, they failed to discover sufficient facts during the limitations period.

General Aircraft Corp. v. Air America, supra.

In summary, this lawsuit is barred by the running of the applicable statute of limitation and should be dismissed.

JUDITH W. ROGERS
Corporation Counsel, D.C.

JOHN H. SUDA
Deputy Corporation Counsel, D.C.

LAURA W. BONN, (951320)

GEORGE N. BARCLAY (248849)
Assistant Corporation Counsel, D.C.
Attorneys for Defendants
District Building
Washington, D.C. 20004
727-6348

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Memorandum of Defendants District of Columbia was hand delivered to Daniel M. Schember, Esq., Attorney for Plaintiffs, 1712 N. Street, N.W., Washington, D.C. 20036; and David White, Esq., Attorney for Federal Defendants, Department of Justice, Washington, D.C. 20530, this 13 Day of November, 1981.

Assistant Corporation Counsel, D.C.
Attorney for Defendants
District Building, Rm. 324
Washington, D.C. 20004
727-6348

11/19/81

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al.,	)	
Defendants.	)	

MEMORANDUM BY FEDERAL DEFENDANTS
ON THEIR DEFENSES

This Court, by instruction of November 18, 1981, requested the federal defendants to address certain issues relating to their defenses in this civil action, including absolute and qualified immunity and the statute of limitations. The Court also requested the federal defendants to set forth their position on plaintiffs' claims of invasion of privacy and mental distress.

This memorandum will address these issues as well as others pertinent to this civil action.

A. Summary Of Plaintiffs' Claims And Defendants' Basic Defense

The apparent fundamental element of plaintiffs' cause of action is an alleged conspiracy among defendants Brennan, Moore, Jones, Grimaldi, and Pangburn to engage in activity to defeat or interfere with the rights of the plaintiffs. Plaintiffs further allege that pursuant to this conspiracy each of these defendants committed overt acts which interfered with plaintiffs' first amendment right of association and their "right of privacy."

The federal defendants deny, of course, that they were engaged in a conspiracy. For the most part the defendants did not work together but were, instead, distributed through a reasonably well-defined bureaucratic structure made up of several hundreds of persons. The only common threads tying the defendants together was their employment with the Federal Bureau of Investigation and their obligation to carry out their respective duties established by their superiors, including the Director of the FBI and the Attorney General.

A summary of the defendants' factual contentions will suffice for purposes of this memorandum. None of the federal defendants was directly involved in the investigation of any plaintiff. The only investigative activity at issue in this action personally engaged in by any defendant is the receipt by defendant Pangburn of informant reports relating to the Black United Front. He is also alleged to have engaged in intimidating interviews, but the identities of persons interviewed or the occasions on which such interviews occurred has not been described in plaintiffs' submissions to this Court. No plaintiff alleges personal intimidation by defendant Pangburn or any other defendant.

The only activity defendant Grimaldi was personally involved in was the preparation and distribution of The Rational Observer, an anonymous newsletter. He also prepared various memoranda relating to certain acts about which plaintiffs complain, but his participation in these matters was essentially that of an amanuensis, preparing memoranda for transmission to FBI Headquarters regarding proposals devised by other agents pursuant to the counterintelligence program ordered by the Director of the FBI. He neither created nor implemented such proposals which, in any event, were in all cases subject to the approval or disapproval of FBI Headquarters.

Defendant Jones was the Security Coordinating Supervisor at the Washington Field Office, in which capacity he supervised approximately 200 agents distributed among the nine squads responsible for all foreign and domestic intelligence activity in that office. His initials appear on some, but not all, of the memoranda relating to counterintelligence activities at issue in this action. He probably initialed documents relating to recommendations for electronic surveillance of the Black Panther Party and the People's Coalition for Peace and Justice. These recommendations were prepared in accordance with directives from the Director, and in each case the recommendations were subject to the approval of the Attorney General.

Defendant Moore was chief of the racial section at FBI Headquarters. His personal involvement in matters relevant to this action is limited to his forwarding of recommendations to his supervisors that certain information regarding the Poor People's Campaign be provided to the press. He also forwarded recommendations to his supervisors regarding electronic surveillance of the Black Panther Party. In both of these matters he was following procedures established by his superiors and, in each case, the recommendation was subject to the approval of his supervisors.

Defendant Brennan's role in this civil action is based on the fact that the memorandum creating the COINTELPRO-New Left was prepared in the section of which he was chief. His testimony will show that this program was the idea of, and was created at the direction of, defendant Brennan's superior in the FBI, William C. Sullivan. Defendant Brennan had no personal involvement in any activity complained of by plaintiffs except that he forwarded to his superiors recommendations for electronic surveillances at issue in this action. In each instance of electronic surveillance he was following procedures established by the Attorney General, and, in each instance, the surveillance was approved by the Attorney General.

B. Absolute Immunity

Plaintiffs have asserted a cause of action based on what they contend is the common law tort of invasion of privacy. Whether or not such a tort exists, the law of this circuit is that federal officers performing discretionary acts within the scope of their employment are absolutely immune from liability for alleged commission of common law torts. Sami v. United States, 617 F.2d 755, 770-73 (D.C. Cir. 1979). Applying the considerations discussed in Sami, the present defendants are absolutely immune from liability on the claim of common law tort of invasion of privacy. This is not an action involving false arrest or imprisonment by a law enforcement officer for which only a restrictive immunity is traditionally granted. No rationale exists in the facts of this action to justify departure from the salutary rule of Sami.

C. Qualified Immunity

The defense of qualified, or good faith, immunity is available to federal officers alleged to have committed "constitutional torts." Sami, supra. The defense comes into issue only when plaintiffs have established injury to their constitutional rights as a result of acts committed or personally directed by a defendant. The defendant is then accorded immunity from liability if he can establish that he believed in good faith that his actions were lawful, and his belief was reasonable. Bivens v. Six Unknown Agents, 456 F.2d 1339 (2d Cir. 1972).

With regard to any act for which plaintiffs establish a prima facie case of intrusion of their constitutional rights, each defendant shown to have participated in the act will testify as to the grounds for his belief, including past practices, directives or instructions from superiors, his understanding of the law, and his personal appreciation of the intrusion caused by his actions. In addition, on particular issues supplemental testimony and exhibits will be offered to demonstrate that the subjective good faith belief was reasonable.

With regard to the use of informants as an investigative technique, defendants will offer evidence of the law at the time. The Supreme Court had addressed the issue and had found that receipt of information from an informant was not violative of constitutional rights. Hoffa v. United States, 385 U.S. 293, 311 (1966); United States v. White, 401 U.S. 745, 749 (1971).

With regard to warrantless electronic surveillance for national security purposes, defendants will offer documents demonstrating the directives of the Attorney General, as well as the Attorney General's opinion on the legality of such surveillances. Expert testimony may be offered for purposes of explaining the evolution of the law of electronic surveillance from 1967 to 1974 and describing the activities of the Justice Department in guiding and responding to that evolution. Testimony in this regard will refer to significant Supreme Court decisions during the period, including Katz v. United States, 389 U.S. 347 (1967), and United States v. United States District Court, 407

U.S. 297 (1972); lower court decisions addressing the issue; and the language of the principal statute involved, 18 U.S.C. § 2511(3).

With regard to the Federal Bureau of Investigation's authority to conduct domestic intelligence investigations, the defendant will offer Department of Justice directives, FBI instructions, and testimony to describe the purposes and value of such investigations.

D. Statute of Limitations

Federal defendants have previously presented their arguments and facts pertinent to the issue of the statute of limitations. The outline of the federal defendants' evidence is as follows.

Plaintiffs have alleged no act occurring within the limitations period calculated as the three years preceding the commencement of this action on July 16, 1976. Plaintiffs have also made no offer of evidence to demonstrate fraudulent or deliberate concealment by the defendants, and plaintiffs' counsel has conceded that plaintiffs will offer no evidence of due diligence prior to April, 1976.

In addition, federal defendants will demonstrate that prior to July 16, 1973, plaintiffs had facts and knowledge sufficient to lead them to believe they may have had a cause of action against agents of the FBI. To prove this, federal defendants will rely on the deposition testimony of the plaintiffs, each of whom describes personal experiences, beliefs, and suspicions leading him or her to believe (1) that the FBI was generally investigating the types of persons and groups with whom the plaintiffs associated, and (2) that he or she was an individual target of FBI interest. (A summary of this testimony is included in Plaintiffs' Memorandum in Response to Order of October 29, 1981.) In addition, federal defendants will offer newspaper articles published in 1972 which plaintiffs admit they read and which were the basis for filing this action. The federal defendants have also referred to and will introduce additional facts, of which plaintiffs may not have been personally aware but which were available to the public in

general, demonstrating actual investigative activity and public perceptions of investigative activity. On this point defendants will offer the opinion in Fifth Avenue Peace Parade v. Gray, 480 F.2d 326 (2d Cir. 1973), and an article by Frank Donner: Spying for the FBI, published in the New York Review of Books, April 22, 1971.

In an effort to refute the federal defendants' factual contentions regarding plaintiffs' knowledge and well-founded beliefs, plaintiffs' counsel has asserted that the requisite facts were not known until publication of the Church Committee Report in April, 1976, and it further appears that many of the events now constituting part of the cause of action were not discovered until after the action was filed.

The first assertion is false, and it is demonstrated to be false by the fact that no plaintiff stated at deposition that the Church Committee Report was the occasion upon which suit began to be contemplated, the plaintiffs based none of their original allegations on the Report, and the decision to commence the action had actually been made prior to publication of the Report. Furthermore, in the latest submissions detailing plaintiffs' factual contentions, each of them admits to only "constructive" knowledge of the Church Committee Report. It is inconsistent to argue that the commencement of the action was motivated by a document of which no one had actual knowledge.

The second assertion is beside the point. The issue is whether and when plaintiffs had, or should have had, sufficient basis to file suit. The issue may be drawn thusly: What facts served as the basis for commencement of this action in July, 1976, and when did plaintiffs have those facts? Their testimony indicates that the relevant facts were available to them by at least March, 1972.

An additional consideration in this regard is the function and purpose of notice pleading. Plaintiffs filed an admittedly vague Complaint and then argued that more specific pleading was not possible because the relevant details were in the possession of the defendants. The Court agreed with this proposition in the Order of November 9, 1979. If plaintiffs are to be permitted to file a vague, conclusory pleading, then they should be bound by a limitations period which commences when they have sufficient

information to file such a pleading. It would seem peculiarly unfair for plaintiffs to assert that they can commence an action based on few, if any, facts and simultaneously claim that the limitations period does not start to run until they come into actual possession of facts proving each element of the cause of action.

E. Plaintiffs' Claims Of Constitutional Right Of Privacy And Mental Distress

Plaintiffs claim that the defendants' actions toward them violated rights of privacy guaranteed by the Constitution of the United States.

The Constitution does not provide a specific guarantee of privacy, and the Supreme Court has ruled that only certain limited activities enjoy constitutional protection.*/ Those activities entitled to protection under the Constitution from governmental intrusion are those comprising the most intimate aspects of a person's life: matters relating to marriage, the decision to have children, contraception, family relationships, and the rearing and education of children. Rosenberg v. Martin, 478 F.2d 520, 524-25 (2nd Cir. 1973).

The purpose of this constitutional privacy protection is to leave a person free to make decisions about those aspects of personal life without being forced or penalized in his decision by governmental intrusion. These personal matters are not, however, given protection under the Constitution where a person voluntarily divulges them to a friend or confidante who in turn provides information to a Government official,**/ nor are matters that a person divulges in a way that makes them accessible to the public, even in his own home or office, recognized as being private under the Constitution, even when they reflect unfavorably on a person's reputation and concern matters that he claims are confidential in nature.***/

*/ Carey v. Population Services International, 431 U.S. 678, 684-85 (1977); Whalen v. Roe, 429 U.S. 589 (1977); Paul v. Davis, 424 U.S. 693, 712-13 (1976).

**/ United States v. Caceres, 440 U.S. 741 (1979); United States v. White, 401 U.S. 745 (1971); Hoffa v. United States, 385 U.S. 293, 302 (1966).

***/ Katz v. United States, 389 U.S. 347, 351 (1967). Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975).

As a variation on the notion of privacy plaintiffs assert a right of privacy in association as recognized in NAACP v. Alabama, 357 U.S. 449 (1958), and a right of privacy of political belief as recognized in Jones v. Unknown Agents of the Federal Election Commission, 613 F.2d 864 (D.C. Cir. 1979).

Neither case is applicable here. NAACP v. Alabama pertained to a governmental effort to compel disclosure of membership in an association where there was a clear threat, based on past practice and experience, of harrassment, intimidation, and physical harm if disclosure occurred. The Constitution does not, however, prescribe a general right of privacy barring the government from acquiring knowledge of members of political organizations in connection with proper law enforcement or administrative purposes. Buckley v. Valeo, 424 U.S. 1 (1976); Reporters Committee v. American Telephone and Telegraph, 593 F.2d 1030 (D.C. Cir. 1978).

Jones, supra, involved an allegation that government investigators were conducting interviews of private citizens and endeavoring to inquire into their private political beliefs. As pertinent to this civil action, the plaintiffs were stating their political beliefs freely and openly in public gatherings, meetings, and in publicly disseminated writings. No plaintiff has alleged that he was compelled to disclose his beliefs or subjected to threats or harrassment at the hands of the defendants. To the extent plaintiffs' political beliefs are recorded in FBI files, the information was obtained as the result of the voluntary, uncompelled disclosure by plaintiffs.

Plaintiffs' claim of mental and emotional distress is hollow. The "distress" allegedly occurred when plaintiffs read their files. No overt signs of stress, such as bodily injury, sickness, or even phychological or psychiatric treatment, are alleged. In the absence of physical impact, plaintiffs have no cause of action for negligent infliction of emotional stress. Garber v. United States, 578 F.2d 414 (D.C.. Cir. 1978). In this case, plaintiffs' allegation itself is contrary to the notion of intentional infliction of emotional harm. In any event, plaintiffs make no allegation that these defendants acted with such intention. Furthermore, a claim of emotional

distress is not actionable under the civil rights statutes, 42 U.S.C. §§ 1983, 1985(3). Robinson v. McCorkle, 462 F.2d 111 (3rd Cir. 1972); Dear v. Rathje, 391 F. Supp. 1 (N.D. Ill. 1975), affirmed, 532 F.2d 756 (7th Cir. 1976); Taylor v. Nichols, 409 F. Supp. 927 (D. Kan. 1976), affirmed, 558 F.2d 561 (10th Cir. 1977).

In addition, taking the allegation of emotional harm as an element of damages rather than as a cause of action, plaintiffs are not entitled to a presumption that mental and emotional distress occurred. See Carey v. Piphus, 435 U.S. 247, 259-64 (1978). Plaintiffs must prove the nature and circumstance of the wrong and its effect on them individually. In the absence of proof of actual, if intangible injury, plaintiffs would be entitled to no more than nominal damages for vioaltion of constitutional rights. Carey, supra, at 266-67.

The alleged injury in this instance, as it is unaccompanied by physical injury, is subjective in nature. Expert evidence is therefore necessary, otherwise the jury must rely only on the self-serving testimony of plaintiffs.

Respectfully submitted,

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Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

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1/23/81

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

FILED
NOV 23 1981
JAMES F. DAVEY, Clerk

FINAL PRETRIAL ORDER

I.

Jury Selection and Trial Scheduling

The Jury Commission has been requested to provide a panel of 75 potential jurors. Six jurors and six alternates will be seated. The Court will advise the panel that they will be expected to sit for 18 trial days, Monday through Friday, from 9:30 a.m. to 5:00 p.m., unless otherwise ordered for good cause shown.

The plaintiffs have submitted two witness lists, the initial one with 168 names, and a later substitute submitted November 17 with 99 names. Defendants have filed briefer lists.

The parties shall confine the number of witnesses called to those who can be heard within the following time frame: the Court has allocated 18 trial days (five and one-half hours per day) or 99 courtroom hours to this case. Jury selection, instructions and arguments should not require more than ten courtroom hours. Plaintiffs will therefore have available about 44 courtroom hours in which to adduce affirmative and rebuttal evidence; defendants will also have 44 hours in which to adduce their defense evidence. Cross-examination of each witness shall not exceed the time required for direct examination of that witness, except by leave of Court for good cause shown.

The Court will conduct voir dire on the record, in open court, selecting from questions suggested by counsel as well as propounding questions that occur to the Court. Voir dire examinations at the bench will be the exception, as, for example, when necessary to protect the privacy of a potential juror.

The federal defendants will be allowed three peremptory challenges in the selection of jurors and one such challenge in the selection of alternates, and the District of Columbia defendants will be allowed the same number of challenges as the federal defendants; the federal and District of Columbia defendants may pool their challenges. The plaintiffs will be allowed six peremptory challenges for jurors and two peremptory challenges for alternate jurors. The peremptory challenges will be effected by counsel by manually striking particular names from a list of panel members to be furnished to counsel by the Deputy Clerk at the beginning of the jury selection process. After the six jurors are seated, the deputy will return the list to counsel for repetition of the striking process and selection of the six alternates. Some details:

Counsel may, but are not required to, rise when the jury enters or leaves the courtroom.

It will speed proceedings if counsel will arrange to have the next witness seated outside the courtroom as the time for that witness's testimony approaches.

For argument and proof, plaintiffs will open; both defendants may respond or rebut seriatim, after which plaintiffs may close.

Parties shall maintain custody of exhibits until conclusion of the trial. Such exhibits as have been admitted into evidence shall be received by the Deputy Clerk during the jury deliberations and returned to the parties after the verdict.

II.

Issues

1. Whether a particular act of a defendant or particular acts of defendants jointly or as alleged co-conspirators prevented a particular plaintiff on one or more

particular occasions from exercising or interfered with the exercise of rights guaranteed by the First Amendment:

a. To write

b. To speak

c. To assemble (for a "First Amendment purpose") at a particular time and place

d. To associate (for a "First Amendment purpose") with one or more other particular persons

2. Whether particular defendants were engaged in one or more conspiracies to deprive plaintiffs of First Amendment rights described in II.1 above.

3. Whether one or more defendants, individually or through a conspiracy, fraudulently or deliberately concealed from a particular plaintiff knowledge of facts necessary intelligently to prosecute that plaintiff's right of action, which facts plaintiff could not have discovered within the period open under the statute of limitations by the exercise of due diligence.

4. Whether, with respect to each action by each defendant complained of by a plaintiff, a reasonable person in that defendant's situation could believe in good faith that the action taken would not impede a person in plaintiff's position in the exercise of one or more First Amendment rights described in II.1 above, e.g., whether the defendant's action was to aid an actual or potential criminal investigation or to participate with intelligence situations which would require police action to control or counter unlawful domestic disturbances.

III.

Rulings in Limine

1. The alleged conspiracy by District of Columbia law enforcement officers would, if proved, be a violation of 42 U.S.C. § 1985(3). Section 1985(3) applies to proscribed actions taken by any person, irrespective of that person's official capacity, in any "State or Territory." This statute, like 42 U.S.C. § 1982, applies to such unlawful actions in derogation of the rights of racial or other classes in the District of

Columbia. See Hurd v. Hodge, 334 U.S. 24, 31 (1948); cf. District of Columbia v. Carter, 409 U.S. 418, 420-24 (1973).

2. Plaintiffs who belong to no racial minority may nevertheless offer evidence to establish, if they can, that they are members of some other non-racial class entitled to protection under 42 U.S.C. § 1985(3) because, for example, of their political activities or associations. See Glasson v. City of Louisville, 518 F.2d 899 (6th Cir.); cert. denied, 96 S.Ct. 280 (1975).

3. Plaintiffs may offer evidence of alleged "illegal intelligence investigations" in support of their claims with respect to issues described in paragraphs II.1 and II.2 above. Such evidence is inadmissible for the purpose of proving some claim about "invasion of privacy" in the absence of evidence that one or more defendants or a conspiracy of them violated the rights guaranteed to a particular plaintiff by the Fourth Amendment. See Carey v. Piphus, 435 U.S. 247 (1978); cf. Griswold v. Connecticut, 381 U.S. 479 (1965). See also Griswold v. Connecticut, supra, 381 U.S. 479, 507 (Black, J., dissenting).

4. No plaintiff has proffered evidence that any defendant or a conspiracy of them violated that plaintiff's rights under the Fourth Amendment. But see Fed. R. Civ. Pro. 15(b). See generally United States v. Salvucci, 100 S.Ct. 2547 (1980).

5. As a matter of law, United States v. United States District Court, 407 U.S. 297 (1972) must be applied retroactively. Zweibon v. Mitchell, 606 F.2d 1172 (D.C. Cir. 1979). This ruling does not preclude any individual from offering evidence about the state of the law prior to United States v. United States District Court (or his understanding of it) in support of a defense in the issue stated in II.4 above.

6. Plaintiffs' motion to preclude evidence relating to Communist Party affiliation of a plaintiff is denied.

7. Each plaintiff may offer evidence of any mental distress resulting from violation of rights as defined in II.1 above. In the absence of evidence of violation by one or more

defendants of rights of a plaintiff guaranteed to him or her by the Fourth Amendment, evidence of mental distress on account of alleged "invasion of privacy" by alleged "illegal intelligence investigations" is not admissible.

SO ORDERED.

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

Date: Nov. 23, 1981

CO-159
New 11/74

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Julius Hobson, et al., Plaintiff	)	
vs.	)	CIVIL NO. 76-1326
Jerry v. Wilson, et al., Defendant	)	

FILED
DEC 23 1981
JAMES F. DAVEY, CLERK

JUDGMENT ON THE VERDICT
(For Defendant)

This cause having been tried by the Court and a Jury, before the Honorable Louis F. Oberdorfer, Judge presiding, and the issues having been duly tried and the Jury having duly rendered its verdict; now therefore, pursuant to the verdict,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff(s) Tina Hobson, Reginald Booker, and David Eaton

take nothing on the complaint against the defendant(s) Jack Acree, Harold Bynum, John Mahaney, Ann Kolego Markovich, George Suter, Edward Jagen, and Christopher Scrapper.

~~and that the said defendant(s) have and recover costs from the said plaintiff(s).~~

JAMES F. DAVEY, Clerk

Dated: 23 December 1981

By: Deputy Clerk

CO-159
New 11/74

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Julius Hobson, et al.,
Plaintiff

vs.

Jerry v. Wilson, et al.,
Defendant

CIVIL NO. 76-1326

FILED
DEC 23 1981
JAMES F. DAVEY, CLERK

JUDGMENT ON THE VERDICT
(For Defendant)

This cause having been tried by the Court and a Jury, before the Honorable Louis F. Oberdorfer, Judge presiding, and the issues having been duly tried and the Jury having duly rendered its verdict; now therefore, pursuant to the verdict,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff(s) Washington Area Women's Strike for Peace.

take nothing on the complaint against the defendant(s) Jerry V. Wilson, Thomas J. Herlihy, Jack L. Acree, Christopher J. Scrapper, Edward J. Jagen, George R. Suter, Harold Bynum, John J. Mahaney, Ann Kolego Markovich, Charles D. Brennan, George C. Moore, Gerould W. Pangburn, Gerald T. Grimaldi, Courtland J. Jones, and the District of Columbia.
~~and that the said defendant(s) have said recover costs from the said plaintiff(s).~~

JAMES F. DAVEY, Clerk

Dated: 23 December 1981

By: [signature]
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Sammie A. Abbott, Abraham Bloom, Reginald Booker, Tina Hobson, Richard Pollock, Rev. David Eaton, Washington Area Women Strike for Peace, Washington Peace Center, Arthur Waskow, Plaintiffs, v. Jerry V. Wilson, Thomas J. Herlihy, Jack L. Acree, Christopher J. Scrapper, Edward J. Jagen, George R. Suter, Harold Bynum, John W. Mahaney, Ann Kolego Markovich, District of Columbia, Charles D. Brennan, George C. Moore, Gerould W. Pangburn, Gerald T. Grimaldi, Courtland J. Jones, Defendants.	:	Civil Action No. 76-1326

FILED
DEC 23 1981
JAMES F. DAVEY, CLERK

JUDGMENT ON THE VERDICT
(FOR PLAINTIFFS)

JUDGMENT ON THE VERDICT
(For Plaintiffs)

This cause having been tried by the Court and a Jury, before the Honorable Louis F. Oberdorfer, Judge presiding, and the issues having been duly tried and the Jury having duly rendered its verdict; now, therefore, pursuant to the verdict,

IT IS ORDERED, ADJUDGED AND DECREED that each of the following plaintiffs: Reginald Booker, Tina Hobson, and Rev. David Eaton have and recover of and from each of the following named defendants the amount stated opposite that defendant's name:

Name	Amount	
Charles D. Brennan	Nine Thousand Three Hundred Seventy-Five and 00/100	($ 9,375.00)
George C. Moore	Seven Thousand Five Hundred and 00/100	($ 7,500.00)
Courtland J. Jones	Five Thousand Six Hundred Twenty-Five and 00/100	($ 5,625.00)
Gerald T. Grimaldi	Four Thousand Six Hundred Eighty-Seven and 50/100	($ 4,687.50)
Gerould W. Pangburn	Five Thousand Six Hundred Twenty-Five and 00/100	($ 5,625.00)
Jerry V. Wilson	Five Thousand Six Hundred Twenty-Five and 00/100	($ 5,625.00)
Thomas J. Herlihy	Four Thousand Six Hundred Eighty-Seven and 50/100	($ 4,687.50)
District of Columbia	Thirty-Seven Thousand Nine Hundred Thirty-Seven and 50/100	($ 37,937.50)

together with costs.

JAMES F. DAVEY, CLERK

By: Rebecca [illegible]
Deputy Clerk

Date: Dec 23, 1981